Diwan Bros vs Central Bank Of India, Bombay And Others on 7 May, 1976

Equivalent citations: 1976 AIR 1503, 1976 SCR 664, AIR 1976 SUPREME COURT 1503, 1976 3 SCC 800, 1976 2 SCWR 140, 1975 UJ (SC) 885, 1976 2 SCJ 270, 1976 2 SCR 210, 1976 (1) SCC 99

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, P.N. Bhagwati, A.C. Gupta

PETITIONER:
DIWAN BROS.

Vs.

RESPONDENT:
CENTRAL BANK OF INDIA, BOMBAY AND OTHERS

DATE OF JUDGMENT07/05/1976

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
BHAGWATI, P.N.
GUPTA, A.C.

CITATION:
1976 AIR 1503 1976 SCR 664
1976 SCC (3) 800

ACT:
Court Fees Act, Schedule II, Art. 11.
Displaced Persons (Debts Adjustment) Act, 1951 - Tribnal's decision-If a decree within the meaning of s. 2(2) C.P.C.
Court Fees Act. Schedule II, Art. 11-Schedule 1 Art. 1-Applicability of.

HEADNOTE:
Schedule II, Article 11 of the Court Fees prescribes a sum of Rs. 2/- as court fees in the case of a memorandum of appeal presented to a High Court when the appeal is not from a decree or order having the force of a decree.
The Tribunal appointed under the Displaced Persons

(Debts Adjustment) Act 1951 dismissed the petition filed by the appellant claiming certain sums from the respondents. In appeal to the High Court from the decision of the Tribunal did not amount to a decree within the meaning of s. 2(2) of the Code of Civil Procedure. The taxing Judge, to whom question of payment of court fees was referred, came to the conclusion that the appellant should pay ad valorem court fees under Schedule I, Article 1 of the Court Fees Act.

On the question whether the decision of the Tribunal was a decree within the meaning of s. 2(2) C.P.C.

Allowing the appeal to this Court,

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HELD: The memorandum of appeal in the instant case falls within the ambit of Schedule II, Article 11 of the Court Fees Act and the view of the taxing Judge that ad valorem court fees were payable under Schedule I Article 1 was legally erroneous. [683C]

(1) (a) In the definition of "decree" contained in s. 2(2) of the Code of Civil Procedure, three essential conditions are necessary: (i) that the adjudication must be given in suit; (ii) that the suit must start with a plaint and culminate in a decree; and (iii) that the adjudication must be formal and final and must be given by a civil or revenue court. [677E-F]

Under the 1951 Act, special Tribunal was created to enquire into the claims of displaced debtors or creditors. It cannot be called a court in any sense of the term because the legislature had made a clear distinction between a Tribunal and a courts. Secondly, since proceedings before a Tribunal statute with an application and not with a plaint the other important ingredient of a decree is wholly wanting. Thirdly the claim before the Tribunal had been described as a preceding rather than a suit. Therefore, none of the requirements of a decree is to be found in the decision given by the Tribunal even though the legislature may have described the decision given by the Tribunal even though the legislature may have described the decision as a decree. A mere description of the decision of the Tribunal as a decree does not make it a decree within the meaning of the Court Fees Act. [677G-H]

(b) The term "decree" used in Schedule II, Article 11, is referable to a decree as defined in s. 2(2) of the Code of Civil Procedure. As the decision of the Tribunal in the instant case does not fulfil the requirements of a decree,

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it is not a decree within the meaning of Schedule II, Article 11 of the Court Fees Act. [678D]

Mannan Lal v. Mst. Chhotaka Bibi [1970] 1 S.C.C. 769; Ram Prasad v. Tirloki Nath, AIR [1938] All. 50; Dawood Karim Ashrafi v. City Improvement Board. AIR [1954] Hyd. 81; Antala Gope v. Sarbo Gopain, AIR [1962] Pat. 489; Mrs. Panzy Fernadas v. Mrs. M. F. Cusoros & others AIR [1963] All. 153; Dundoppa v.S G. Motor Transport Company. AIR [1966] Mys,.

150; Irshad Husain v. Bakshish Hussain AIR [1946] Oudh 254; Harrish Chandra Chatteree vg. Bhaoba Tarini Debi, 8 C.W.N. 321; Taxing Officer, High Court Appellate side v. Jamnadas Dharamdas ILR [1956] Bom. 211; Barras v. Aberdeen Steam Trawling and Fishing Company [1933] A.C. 402 411; Parmanand Lokumal and others v. Khudabadi Bhaibund Co-operative Credit Bank Ltd. and others, AIR [1958] Raj. 146; The Punjab National Bank Ltd. v. The American Insurance Company Ltd. ILR [1958] 8 Raj. 216 and S. Sohan Singh v. Liverpool and London and Globe Insurance Co. Ltd. AIR [1956] Pb. 153, referred to.

Parmanand Lokumal and others v. Khudabadi Bhaibund Co-opertive Credit Bank Ltd. and others, AIR [1958] Cal. 675; Punjab National Bank Ltd. v. Firm Isardas Kaluram AIR [1957] Raj. 146; Kishandas v. Parasram AIR [1955] Raj. 81 and Sita Ram v. Mool Chand, AIR [1954] All. 672,. not approved.

(c) Where a legislature uses an expression bearing a well-known legal connotation it must be presumed to have used the said expression in the sense in which it has been so understood. Therefore, when the Court Fees Act uses the word "decree" which had a well-known legal significance, the legislature must be presumed to have use this term in the sense in which it is which it is understood in the Civil Procedure Code.[678F; 679B]

Barras v. Aberdeen Steam Trawling and Fishing Company [1933] A.C. 402, 411. referred to.

There is no force in the contention of the respondent that under s. 5 of the Court Fees Act the decision of the taxing Judge was final and could not be re-opened in any court and as such no appeal under Article 136 was maintainable. Even though the order of the taxing Judge may be final under s. 5, the power of this Court under Article 136 will over-ride any stamp of finality given by a statute. The finality under s. 5 cannot derogate from the power conferred by the Constitution on the Supreme Court. [683E]

S. Rm Ar. S. Sp. Satheppa Chettiar v. S. Rm. Ar. Rm. Ar. Rm. Ramanathan Chettiar [1958] S.C.R. 1021, held inapplicable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1370 of 1968.

Appeal by Special Leave from the Judgment and order dated the 6th March, 1967 of the High Court of Judicature at Allahabad in First Appeal No. Nil of 1965.

J. P. Goyal and S. M. Jain, for the Appellants. G.L. Sanghi, D. N. Misra and O. C. Mathur, for Respondent No. 1.

G. N. Dixit and O. P. Rna, for the State of U.P. The Judgment of the Court was delivered by FAZAL ALI, J.-This is an appeal by special leave against the judgment of the Single Judge of the Allahabad High Court deciding a court fee matter in connection with the memorandum of appeal filed by the appellants before the Allahabad High Court against a decree passed by the Tribunal appointed under the Displaced Persons (Debts Adjustment) Act, 1951- hereinafter referred to as 'the Act'. The appellants had filed an application under s. 13 of the Act before the Tribunal alleging that it was a partnership firm and claimed that an amount of Rs. 3,50,000/- by way of refund of security deposits and a sum of Rs. 55,000/- as commission was due from the respondents. The application was tried by the Tribunal and the claim preferred by the appellants was ultimately dismissed by the Tribunal by its decree dated May 19, 1965. Additional Civil Judge of Badaun was assigned as the Tribunal under the aforesaid Act. The appellants then filed an appeal before the Allahabad High Court with a nominal court fee of Rs. 5/- but the Stamp Reporter of the High Court was of the opinion that the appellants should have paid ad valorem court fees on the total claim preferred by the appellants before the Tribunal which had been disallowed. The matter was taken up by the Taxing Officer, who, in view of the substantial importance of the point raised, made a reference to the Taxing Judge for deciding the court fee payable on the memorandum of appeal in the instant case. The plea of the appellants was that as the decision of the Tribunal did not amount to a decree as contemplated by s. 2(2) of the Code of Civil Procedure 1908, ad valorem court fees were not payable and the appellants were entitled to pay court fees as prescribed in Sch. 11 Art. 11 of the Court Fees' Act. The stand taken by the revenue was that as the present appeal was against a decree, the case of the appellants squarely fell within the ambit of s. 4 of the Court Fees' Act and therefore ad valorem court fees were payable under Sch. I Art. 1 of the Court Fees' Act. The matter was taken up by the Taxing Judge who went into the question of law raised before him and after considering some authorities, particularly those of the Allahabad High Court, agreed with the Stamp Reporter and came to the conclusion that the appellants should pay ad valorem court fees under Sch. I Art. 1 of the Court Fees' Act. The Taxing Judge accordingly by his order dated October 11, 1965 directed the appellants to make up the deficiency in the payment of the court fees. It was against this order that the appellants filed a petition for special leave to this Court which having been granted the appeal has now been placed before us for hearing.

This appeal involves a short but substantial question of law as to the interpretation, scope and ambit of Sch. II Art. 11 of the Court Fees' Act as applicable to appeals preferred against the orders or decrees passed by the Tribunal constituted under the Act. The point is not free from difficulty and there appears to be a serious divergence of judicial opinion on the question as to whether in appeals like the present, Sch. I Art. 1 or Sch. II Art. 11 of the Court Fees' Act would apply.

Mr. Goyal learned counsel appearing for the appellants raised two points before us. In the first place he contended that as the proceedings before the Tribunal were not proceeding in a Civil Court nor was the Tribunal a Court, therefore, the decision of the Tribunal even though loosely called as a decree is not a decree as contemplated by s. 2(2) of the Code of Civil Procedure and therefore the case of the appellants clearly falls within the ambit of Sch. II Art. II of the Court Fees Act. It was next contended that as the Tribunal had disallowed the claim of the appellants by the order impugned before the High Court the order did not amount to any decree and, therefore, the question of payment of ad valorem court fees did not arise. In this connection it was also submitted that the Act

being a beneficial statute was designed to provide a cheap and expeditious remedy to displaced persons in certain circumstances and therefore the Parliament never intended that displaced persons who had lost all that they possessed in Pakistan should be made to pay ad valorem court fees without possessing the capacity to do so.

Mr. Dikshit appearing for the respondents sought to repel the arguments of Mr. Goyal on two grounds. In the first place it was submitted that under the provisions of the Court Fees Act the order of the Taxing Judge was final and could not be re-opened by this Court even in special leave. Secondly, it was submitted that the Tribunal was nothing but a Civil Court and the provisions of the Act would show that the Tribunal was clothed with all the powers and incidents of a Civil Court. In these circumstances it was contended that any decree which was passed by the Tribunal must be presumed to be a decree of the Court and was made appealable as such under s. 40 of the Act. Therefore, it was said, Sch. II Art. 11 had absolutely no application and the view taken by the Taxing Judge was legally correct.

In order to understand the contentions raised by the counsel for the parties it may be necessary for us to trace the history of the Act and the circumstances in which it was passed. To begin with, following the partition of the country there was an unprecedented rush of refugees from Pakistan to India and our country immediately after becoming independent had to face the colossal problem of rehabilitating the refugees or the displaced persons. Most of these persons had left huge assets behind in Pakistan and had come to this country without a penny. Others were creditors and were entitled to get their debts liquidated from the assets in this country or from the properties possessed by the Banks in this country. Soon after independence there were stray and piecemeal legislations providing for some facilities for displaced debtors and creditors but there was no uniform law to cater to their growing needs in view of the situation faced by them following the partition of our country. In these circumstances, therefore, the Government decided to bring out a uniform legislation so as to be a complete code in itself providing for a cheap and expeditious remedy for displaced debtors and creditors. The matter was first entrusted to a Committee and then to Bind Basni Prasad, a retired Judge of the Allahabad High Court, who after taking evidence of a large number of displaced persons and examining the nature of the claims, submitted a report which formed the basis of the Displaced Persons (Debts Adjustment Act. Introducing the Bill which preceded the Act, Mr. A. P. Jain, the then Minister of State for Rehabilitation, made a long speech in Parliament dwelling on the various aspects of the Bill. The Minister particularly highighted the fact that the condition of the displaced persons was pitable as they had left huge assets behind in Pakistan. In this connection the Minister observed thus:

> "The condition of the displaced persons therefore today is that while their assets have been left behind in Pakistan and they have brought the titles of their property, at least in some cases.
>
> In the provisions contained in this Bill, we have tried to strike a balance between the reduced capacity of the debtor to meet his obligations and at the same time we have taken sufficient care to see that a debtor who is in a position to pay may not deny payment to his creditor.

> In this Bill, we have introduced what might be called a somewhat revolutionary principle, namely, that no debtor will be called upon to pay more than his paying capacity. I shall later on define what the words 'paying capacity' mean, but here it may be enough to mention that paying capacity of a debtor has been defined in a rather liberal manner after allowing fairly large assets which will not be capable of attachment.
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> Clause 13 deals with claims by displaced creditors against persons who are not displaced debtors. That is not comparatively so important because it only gives relief in respect of court fees. We felt that under the depressed economic condition of the displaced creditors, it is necessary that we must give them some relief against the huge amount of money which they have to pay as court fees etc. I submit that these are all very necessary and humane considerations which take into account the actual paying capacity of the debtor. We have maintained the existing procedure in the Courts but we have simplified it because a prolonged procedure and the complexities of the civil courts mean a lot of money. We have provided only one appeal in clause 40."

A perusal of the above observations will give a clear insight into the various objects of the Act and the main purposes which the legislation sought to achieve. It will be noticed that the Minister laid particular stress on the paying capacity of the debtors which he called a humane consideration and also described the necessity of giving relief to the displaced persons against the huge amount of money which they may have to pay as court fees. Thus it would appear that the intention of Parliament was to bring out a legislation which would provide for a cheep and expeditious remedy to the displaced persons and entrust the work to a Tribunal which may be able to decide the claims quickly instead of leaving the displaced debtors or creditors to follow the dilatory and cumbersome process of the civil courts. In order to shorten the litigation the Minister expressly stated that only one appeal had been provided in s. 40 of the Act, to the High Court. These matters will have a very important bearing on the interpretation of the provisions of the Court Fees Act as applicable to the decrees passed by a Tribunal under the Act. Even apart from these considerations, it is well settled that in case of a fiscal statute the provisions must be strictly interpreted giving every benefit of doubt to the subject and lightening as far as possible the burden of court fees on the litigant. Thus where an adjudication given by a Tribunal could fall within two provisions of the Court Fees Act, one of which was onerous for the litigant and the other more liberal, the Court would apply that provision which was beneficial to the litigant. In A. V. Fernandez v. State of Kerala, while interpreting the provisions of a fiscal statute, viz., the Travancore-Cochin General Sales Tax Act, this Court observed as follows:

> "It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Reve nue satisfs the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to

> probe into the intentions of the legislature and by considering what was the substance of the matter."

Similarly in State of Maharashtra v. Mishri Lal Tara Chand Lodha and others, while interpreting some of the provisions of the Bombay Court Fees Act, Raghubar Dayal, J., speaking for the Court observed as follow:

> "The Act is a taxing statute and its provisions therefore have to be construed strictly, in favour of the subject-litigant."

These observations manifestly show that the Courts have to interpret the provisions of a fiscal statute strictly so as to give benefit of doubt to the litigant. The principles deducible from the decisions referred to above are well established and admit of no doubt. We, therefore, propose to decide the question raised before us in the light of the principles enunciated above, but before doing that it may be necessary to give a brief survey of the scheme and structure of the Act in order to find out the real nature, scope and ambit of the statute.

To begin with, it may be necessary to extract the relevant portion of the statement of objets and reasons of the statute:

> "The Bill is designed mainly to give relief to displaced debtors in respect of liabilities incurred by them prior to their displacement from West Pakistan though remission of court fees has also been allowed to displaced creditors. A certain amount of relief was afforded to them by Acts XLVII of 1948 and XXV of 1949, but this was found to be inadequate.
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> A thorough examination of the various problems involved had to be made with a view to affording displaced persons adequate and, at the same time, reasonable relief in the matter of their indebtedness, consistently with the needs of their rehabilitation. A decree under the law will thus consist of two parts, the first part being equivalent to and recoverable from the 'paying capacity' of the debtor, and the second part being equivalent to the balance of the total amount decreed and recoverable from the compensation, if and when received by the debtor. The first part of the decree will, as a rule, be recoverable in instalments.
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> In respect of the second part of the decree, it has been accepted that the amount payable should be scaled down in the proportion in which the displaced debtor is able to obtain recompense in respect of his immovable property left behind in West Pakistan. Where no recompense is received, there will be no recovery of the second part of the decree."

Section 4 of the Act provides for constitution of Tribunals to exercise jurisdiction under the Act and empowers the State Government to designate any civil court or class of civil courts as the Tribunal or Tribunals and may also define the areas in which such Tribunal shall exercise jurisdiction. It may

be pertinent to note here that the statute deliberately does not entrust the functions of the Act to the civil court per se but to a Tribunal to be selected from amongst civil courts. Section 5 of the Act provides for an application to be given by a displaced debtor for adjustment of his debts and gives the requirements of that application. Section 6 authorises the Tribunal to reject the application under s. 5, if it does not fulfil the requirements of s. 5 and further gives it the power to grant time to comply with the requirements. Sections 7 and 8 of the Act provide for issue of notices to the respondents and give right to the respondents to file their objections. Section 9 provides for an inquiry into the application made under s. 5. The statute designedly uses the word "proceeding" in s. 9 rather than a suit which clearly shows that the Legislature was aware of the distinction between a "proceeding" and a "suit". Sub-section (2) of s. 9 authorises the Tribunal to decide the dispute and pass such decree in relation thereto as it thinks fit. It is, therefore, clear that the decree which the Tribunal passes is not a decree of the Civil Court but a decree passed by a Tribunal in a proceeding under s. 5 and section 9 of the Act. Section 10 deals with claims by the creditors against displaced debtors and s. 11 regulates the procedure of a petition filed by the creditor. Sub-section (2) of s. 11 further authorises the Tribunal to determine the claim and pass a decree in relation thereto. Section 12 provides for objection by creditor to schedule of assets and s. 13 refers to claims by displaced creditors against persons who are not displaced debtors. Section 14 prescribes the procedure for displaced creditor's petition filed under s. 13 of the Act and authorises the Tribunal to pass a decree as it thinks fit. Sub-section (3) of s. 14 authorities the Tribunal to pass a decree if no cause is shown or if no dispute exists. A perusal of sub-ss. (2) & (3) of s. 14 clearly shows that the statute contemplates a decree which may be one of rejection of the claim put forward by the displaced creditor or one which amounts to allowing the claim. Thus, in other words, whether claim is disallowed or allowed, the order passed by the Tribunal would be a decree in both cases. We have purposely mentioned this fact because some of the High Courts have taken the view that where the Tribunal rejects the claim of a displaced creditor or debtor either on the ground that the petitioner is not a displaced debtor or creditor but not on merits, such an adjudication does not amount to a decree. This distinction sought to be made by some of the courts does not appear to be consistent with the scheme and language of the statute. Section 15 of the Act deals with the consequences of application by displaced debtor. The next relevant provision is s. 18 which regulates the procedure for claims against insurance companies, and sub-s. (2) of this section provides for a decree to be passed by a Tribunal. Section 23 provides for a simplified procedure in certain cases where the claim is below Rs. 5,000/- in which case the Tribunal is empowered to record only a memorandum of the substance of the deposition of the witnesses so as to given a short and summary decision. Section 27 refers to the contents of the decree and s. 28 provides for the forum and the Court in which the decree passed by the Tribunal is to be executed. Section 32 of the Act provides the procedure for scaling down of debts by a displaced debtor. Section 36 provides for extension of period of limitation. Section 40 is the provision for appeals against any decree or final order of the Tribunal or against any order passed in the course of execution. These are the relevant provisions of the Act in so far as the facts of the present case are concerned. A close examination and a detailed analysis of the various provisions of the Act would clearly reveal that the Act is a beneficial statute meant for advancing the cause of the displaced debtors and creditors by conferring substantial benefits on them if they are able to prove their claims. In these circumstances it is clear to us that the Legislature could never have intended that the claimants should have to pay heavy court fees either in getting, their claims adjudicated by the Tribunal or even in filing appeals against the decrees of

the Tribunals. That the displaced persons had been given such concessions and facilities has been held by this Court in Shri Ram Narain v. The Simla Banking & Industrial Company Ltd. where this Court observed as follows:

> "Now, the Displaced Persons (Debts Adjustment) Act is one of the statutory measures meant for relief and rehabil-
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> tation of displaced persons. It is meant for a temporary situation brought about by unprecedented circumstances. It is possible, therefore, to urge that the provisions of such a measure are to be treated as being particularly special in their nature and that they also serve an important national purpose. It is by and large a measure for the rehabilitation of displaced debtors. x x x There is no provision therein which compels either a displaced debtor or a displaced creditor to go to the Tribunal he is satisfied with the reliefs which an ordinary civil court can give him in the normal course. It is only if he desires to avail himself of any of the special facilities which the Act gives to a displaced debtor or to a displaced creditor and makes an application in that behalf under sections 3, or 5(2), or 13, that the Tribunal's jurisdiction comes into operation. x x x It is also desirable to notice that so far as a claim of a displaced creditor against a non-displaced debtor is concerned the main facilities that seem to be available are (1) the claim can be pursued within one year after the commencement of the Act (presumably even though it may have been time barred), (2) a decree can be obtained on a mere application, i.e. without having to incur the necessary expenses by way of court-fee which would be payable if he had to file a suit, (3) the creditor has the facility of getting his claim adjudicated upon by a Tribunal which has jurisdiction over the place where he resides, i.e., a place more convenient to him than if he had to file a suit under the ordinary law in which case he would have to file a suit at the place where the defendant resides or part of the cause of action arises. There may also be a few other minor facilities."

As pointed out above, the claim of the appellants in the present case before us was dismissed by the Tribunal on merits and the stand taken by the Revenue which found favour with the Taxing Judge of the High Court was that the appellants should pay ad valorem court-fees as their claim was rejected on merits.

Counsel for the appellants has submitted that the present appeal would be governed clearly by Sch. II Art. 11 of the Court Fees Act, This Article reads thus:

> "11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree, and is presented.
>
> (a) x x x
>
> (b) to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority.

Two rupees"

> In order to attract application of this article, the following conditions must be fulfilled:
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> (i) that the document sought to be stamped must be a memorandum of appeal;
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> (ii) that the appeal should be presented to the High Court; and
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> (iii)that the appeal should not be from a decree or an order having the force of a decree.

The third condition of the article is couched in a negative form thus implying that this provision would have no application to appeals against decrees. The question that falls for determination is as to whether or not the decision given by the Tribunal under the Act could be said to be a decree within the meaning of Sch. II Art. 11 of the Court Fees Act.

It was submitted by learned counsel for the appellants that the Court Fees Act and the Code of Civil Procedure being statutes complementary to each other should be read as one harmonious whole. We think that the contention is well founded and must prevail. The term "decree" as used in the Court Fees Act is a term of art and it must be deemed to have been used in the same sense as understood by the Code of Civil Procedure. It may be pertinent to note here that neither the Court Fees Act nor the Displaced Persons (Debts Adjustment) Act has defined the term "decree". Nevertheless"

> as far back as 1859, by Act No. VIII of 1859 passed by the Governor-General in Council the concept of a decree was clearly indicated, although no definition of a decree was given in that Act. By ss. 183 to 190 the manner in which the judgments were to be given and the decrees were to be prepared as also the contents of the same were clearly mentioned. Section 189 which expressly dealt with decrees ran thus:
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> "The decree shall bear date, the day on which the judgment was passed. It shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the Register of the suit, and shall specify clearly the relief granted or other determination of the suit. It shall also state the amount of costs incurred in the suit and by what parties and in what proportions they are to be paid, and shall be signed by the Judge, and sealed with seal the Court."

Thus when the Court Fees Act was passed in the year 1870 and used the term "decree" it must be intended to have used the word "decree" so as to bear the same connotation as the word "decree" as explained in s. 189 of Act VIII of 1859. In the Code of Civil Procedure Act XIV of 1882 "decree" appears to have been defined for the first time and the definition may be extracted as follows.

> "'decree' means the formal expression of an adjudication upon any right claimed, or defence set up in Civil Court when such adjudication so far as regards the Court

> expressing it, decides the suit or, appeal. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244, but not specified in section 588, is within this definition: an order specified in section 588 is not within this definition:"

The Code of Civil Procedure of 1908 also gave a full and complete definition of "decree" in s. 2(2) which runs thus:

> "'decree' means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 or section 144, but shall not include-
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> (a) any adjudication from which an appeal lies as an appeal from an order, or
>
> (b) any order of dismissal for default."

It would be seen that an order rejecting a plaint was clearly mentioned as falling under the term "decree". In view of this clear definition of the order rejecting a plaint, it became necessary to make a corresponding change in Sch. II Art. 11 of the Court Fees Act and by Act V of 1908 the words "from an order rejecting a plaint or" used in Sch. II Art. 11 before 1908 were expressly omitted for the simple reason that an order rejecting a plaint having been incorporated in the definition of a "decree" it was not necessary to retain it in the Court Fees Act. This is the most important intrinsic evidence to show that the Legislature in enacting the Court Fees Act used the term "decree" in the same sense as it was used in s. 2(2) of the Code of Civil Procedure, 1908 or in the code obtaining before that day. This also shows that the Court Fees Act and the Code of Civil Procedure are more or less complementary to each other. This matter was the subject-matter of a decision of this Court in Mannan Lal v. Mst. Chhotaka Bibi, where this Court observed as follows:

> "In our view in considering the question as to the maintainability of an appeal when the court-fee paid was insufficient to start with but the deficiency is made good later on, the provisions of the Court Fees Act and the Code of Civil Procedure have to read together to form a harmonious whole and no effort should be made to give precedence to provisions in one over those of the other unless the express words of a statute clearly override those of the other. Apart from the decisions bearing on the point, there can in our opinion, be no doubt that Section 4 of the Court Fees Act is not the last word on the subject and the court must consider the provisions of both the Act and the Code to harmonise the two sets of provisions which can only be done by reading Section 149 as a proviso to Section 4 of the Court Fees Act by allowing the deficiency to be made good within a period of time fixed by it."

There are a number of other decisions of the High Courts which have also taken the view that the word "decree" appearing in Sch. II Art. 11 has to be read in the same sense as used in the Code of

Civil Procedure. In Ram Prasad v. Tirloki Nath a Division Bench of the Allahabad High Court observed as follows "The word 'decree' has not been defined in the Courtfees Act or in the General Clauses Act; and it is safe to assume that the word has been used in the Court-fees Act in the sense in which it is used in the Civil P.C., under which all the decrees are passed and which defines it as meaning "the formal expression of adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit....."

A Full Bench of the Hyderabad High Court in Dawood Karim Ashrafi v. City Improvement Board made a similar observation where the Court observed as follows:

> "To have the force of a decree, an order must possess all the characteristics of a decree. It was further held that the word "decree" has not been defined in the Court-fees Act or in the General Clauses Act, and it was safe to assume that the word has been used in the Court-fees Act in the sense in which it is used in the Civil Procedure Code."

A Division Bench of the Patna High Court also in Antala Gope v. Sarbo Gopain, while interpreting the word 'decree' used in the Hindu Marriage Act, appears to have taken the same view and observed as follows:

> "The Act provides under section 21 that "all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908"; that is to say, the procedure to be adopted by the Court, in dealing with such proceedings will be akin to that provided for the trial of suits in a Civil Court. But that does not make the proceeding a suit or the application a plaint.
>
> x x x x x x x x Therefore, in our view, article 11 of Schedule II of the Court Fees Act will be applicable to all appeals coming under section 28 of the Hindu Marriage Act, 1955."

The later Full Bench decision of the Allahabad High Court in Mrs. Panzy Fernandas v. Mrs. M. F. Cusoros & others appears to have endorsed its previous view and observed as follows:

> "The same result would, however, follow from a perusal of the various provisions of the Code of Civil Procedure of 1859, as it stood in the year 1870. The above provision of law, therefore, indicates that under the Code of Civil Procedure, 1859, a decree could only be passed in a proceeding which could be termed a suit.
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> Section 26 specified the particulars that are to be given in the plaint. Section 27 laid down the manner in which the plaint was to be subscribed and verified. Thus the scheme of the Code of Civil Procedure of 1859 as disclosed by the aforementioned provisions, also points to the conclusion that a decree marks the culmination of a proceeding which is described as a suit, and which, according to the said Code, is

> initiated by means of a plaint. Proceedings for letters of administration under the Indian Succession Act (Act XXXIX of 1925) are not commenced by the institution of a plaint. On the other hand, as section 278 of the said Act shows, they are commenced by an "application" or a petition.
>
> For the above reasons we are of opinion that the decision of a Court in proceedings for letters of administration cannot be described as a decree. If excitability was to be the invariable quality of all decrees, one would expect that the Legislature would incorporate this feature in the provisions which define the nature, scope and contents of a decree. Further, if the Legislature wanted that Schedule II Article 11 should apply only to executable orders it could very easily have added the word "executable before "order"."

In the above case the order passed in a proceeding before a Probate Court was held not to be a decree.

In Dundappa v.S. G. Motor Transport Company the High Court of Mysore observed as follows:

> "In order to understand the expression "having the force of a decree" occurring in this article of the Court Fees Act, it would be useful to derive guidance from the definition of a "decree" contained in section 2(2) of the Code of Civil Procedure, according to the provisions of which, a decree is a formal expression of an adjudication conclusively determining the rights of the parties with regard to all or any of the matters in controversy before the Court."

In Irshad Husain v. Bakhshish Husain the same view was taken by the Oudh High Court where the Court observed as follows:

> "The expression "decree" is not defined either in the Court-Fees Act or in the General Clauses Act. It may, therefore, be safely assumed that this expression as used in Sch. 2, Art. 11, Court-Fees Act, bears the meaning given to it by s. 2(2) Civil P.C. Nor can it be disputed that there is a vital difference between a "decree" and "order" in matters relating to appeals."

In Harrish Chandra Chatterji v. Bhoba Tarini Debi the Calcutta High Court also appears to have taken the same view, where the Court observed as follows:

> "I do not think this was the "formal expression of an adjudication" so as to make the order a decree within the meaning of sec. 2 of the Code of Civil Procedure. The fee payable, therefore, will be one leviable under Art. 11 of the second schedule of the Court-fees Act."

The Bombay High Court in Taxing officer, High Court, Appellate side v. Jamnadas Dharamdas which was a case under the Displaced Persons (Debts Adjustment) Act, has clearly held that the

term "decree" used in Sch. II Art. 11 of the Court Fees Act must be held to Lave the same meaning as in s. 2(2) of the Code of Civil Procedure.

Thus on a consideration of the authorities mentioned above the propositions may be summarised as follows:

> Firstly, that under the definition of a "decree" contained in s. 2(2) of the Code of Civil Procedure, 1908, three essential conditions are necessary:
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> (i) that the adjudication must be given in a suit;
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> (ii) that the suit must start with a plaint and culminate in a decree; and
>
> (iii)that the adjudication must be formal and final and must be given by a civil or revenue court.

In the proceedings under the Act we have already pointed out that as the Legislature has created a special tribunal to inquire into the claims displaced debtors or creditors, the Tribunal cannot be called a Court in any sense of the term because the Legislature has made a clear distinction between a Tribunal and a Court. Secondly, as the proceedings before the Tribunal start with an application and not with a plaint the other important ingredient of a decree is wholly wanting. Thirdly, the Legislature has itself made a clear- cut distinction between a suit and a proceeding and has described the claim before the Tribunal as a proceeding rather than as a suit. In these circumstances, therefore, none of the requirements of a degree are to be found in the decision given by the Tribunal even though the Legislature may have described the decision as a decree A mere description of the decision of the Tribunal as a decree does not make it a decree within the meaning of The Court Fees Act. The term "decree" appears to have been used by the Legislature to convey a sense of finality regarding the decision of the Tribunal more particularly since the adjudication of the claim, but for the Act, would have been by a Civil Court and then it would have been a "decree".

Secondly, as pointed out, the object of the Act is to benefit displaced persons by providing them a cheap and expeditious remedy. The argument of Mr. Sanghi for the respondent., the he Legislature wanted the claimants to pay heavy court-fees if they lost before the Tribunal is totally inconsistent with the aim and object of the Act. If the displaced claimants were given the right to have their claims determined on a nominal court-fee and if only one right of appeal was provided it surpa, ses one's comprehension why the Legislature should have. intended that even if wrong orders were passed by the Tribunal, the claimants should have to pay heavy court-fees if they wanted to file an appeal to the High Court. If the intention of the Legislature was to provide a cheap and not expeditious remedy to the claimants, then the remedy would be incomplete if it was given only at the original stage and not at the appellate stage.

Having regard to these circumstances we are satisfied that the term "decree" used in Sch. II, Art. 11, is referable to a decree as defined in s. 2 (2) of the Code of Civil Procedure and as the decision of the Tribunal in the instant case does not fulfil the requirements of a "decree" as mentioned above, the

said decision is not a decree within the meaning of Sch. II, Art. 11 of the Court Fees Act and, therefore, the memorandum of appeal filed by the appellants squarely falls within the ambit of Sch. II Art. 11 of the Court Fees Act and ad valorem court-fees under Sch. I Art. 1 are not leviale.

Apart from the above considerations, it is a well- settled principle interpretation of statute, hat where the Legislature uses an expression bearin a well-known legal contation it must be premised to have used the said expression in the sense in which it has been so understood. Craies on "Statute Law" observes as follows:

> "There is a well-known principle of construction, that where the legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted unless a contrary intention appears."

In Barras v. Aberdeen Steam Trawling and Fishing Company Lord Buckmaster pointed out as follows:

> "It has long been a well-establilshed principle to be applied in the consideration of Acts of Parliament that where a word of doubtful meaning has received a clear judicial inter pretation, the subsequent statute which incorporates the same word or the samerphrase in a similar context must be construed so that the word or phrase is interpreted according the meaning that has previously been ascribed to it."

Craies further points out that the rule as to world judicially interpreted applies also to words with well-known legal meanings, even though they have not been the subject of judicial interpretation. Thus applying these principles in the instant case it would appear that when the Court Fees Act uses the word "decree" which had a well-known legal significance or meaning, then the Legislature must be presumed to have used this term in the sense in which it has been understood, namely, as defined in the Code of Civil Procedure even if there has been no express judicial interpretation on this point.

There are a number of decisions which have taken the view that Sch. II Art. 11 governs appeals against decisions of the Tribunal. The matter was fully considered in a decision of the Bombay High Court in Jamnaudas Dharamdas' case (supra) where Shah, J., observed as follos:

> "But the expression "decree" has not been defined in the Court-fees Act. The expression "decree" as used in the Court-fees Act.,ppears to have the same connotation as that expression has in the Code of Civil Procedure. The Court fees Act is intended to be a complementary piece of legisiation to the Code of Civil Procedure dealing with payment of court-fees in matters which are tried by the civil Courts. If the expression "decree" has the same connotation as that expression has in the Code of Civil Procedure, it would be difficult to regard an adjudication made by a Tribunal appointed under the Displaced Persons (Debts Adjustment) Act as a decree within the meaning of the Court-fees Act, even though it is so called under the Displaced Persons (Debts Adjustment) Act. In order that an adjudication should amount to a

> decree under the Code of Civil Procedure, it must be a formal expression of an adjudication conclusively determining the rights of the parties with regard to all or any of the matters in controversy in the suit. The proceedings to be initiated by displaced persons for adjustment of their debts or by displaced creditors or displaces, debtors are by applications. Such applications cannot be regarded as plaints in civil suits and are not required by law to bear ad valorem court-fee under schedule 1, cl. 1 of the Court-fees Act. It is true that the provisions of the Code of Civil Procedure are made applicable to the proceedings which are commenced by applications. But the proceedings under the Act cannot be called suits. Again the Tribunal in dealing with an application under s. 6 of the Displaced Persons (Debts Adjustment) Act is not merely deciding a claim made by a debtor, but is dealing with an application for adjustment of his debts. x x x x Even if the Legislature has chosen to call such an award a decree, it cannot amount to a decree within the meaning of sub- s. (2) of s. of the Code of Civil Procedure and in my judgment the award cannot be regarded as a decree within the meaning of Schedule II cl. 11, of the Court- fees Act."

We find ourselves in complete agreement with the aforesaid observations made by Shah, J.

In Parmanand Lokumal and other v. Khudabadi Bhaibund Cooperative Credit Bank Ltd. and Others, while construing an almost identical question, the Calcutta High Court observed as follows:

> "It is to afford relief to displaced persons and that purpose may well be frustrated, if, in cases of preliminary dismissals of the applications the appeals are to be filed with ad valorem court-fee on the disputed amount, even assuming that it is capable of ascertainment at the particular stage. Beaning that in mind and having regard to the scheme and structure of the Act and the nature of the impugned decree, namely, of dismissal on the preliminary finding of the failure of the appellants to prove the necessary status, and, the propriety of that finding being the sole question for consideration in the appeal, so far as the appellant are concerned, we do not think that it would be improper to hold that the subject matter in dispute in the appeal is that question of status which plainly is incapable of money value. The appeal thus would come under Schedule II, Art. 17, of the Court-fees Act, provided, of course, the memorandum of appeal is in a 'suit' as contemplated in the opening paragraph of the Article.
>
> x x x Even if the subject-matter in dispute in the appeal be held to be the relief of reliefs, claimed by the appellants in their original application, the decree, impugned being one of dismissal of the same, we do not think that any other view on the question of its valuation should be taken."

The Calcutta High Court appears to have made a distinction between a decree passed by a Tribunal dismissing the claim of a petitioner on a preliminary ground that the claimant was not able to prove his status and therefore had no locus standi to file the claim and a case where the claim was dismissed or decreed on merits. According to the High Court, in the former case a decision given by

the Tribunal would be only an order, whereas in the latter case it would be a decree. We, however, do not agree with this part of the observation because as pointed out by us the statute makes no distinction at all between the decision of the Tribunal which rejects the claim either on a preliminary point or on merits and one which allows the claim. Both these kinds of decisions have been termed as decree passed by the Tribunal. In these circumstances, therefore, there does not appear to be any warrant for the distinction which seems to have been drawn by the High Court between a decree passed by a Tribunal on a preliminary point or that passed on merits. Even otherwise, according to the general scheme of the Code of Civil Procedure whether the suit culminates in the rejection of the claim of the plaintiff, and thereby in dismissal of the suit or in acceptance of the claim of the plaintiff, where the suit is decreed the final adjudication given by the Court is a decree whether it is one dismissing the claim or one allowing it.

The distinction between a decree which is one of dismissal of the suit or a decree which amounts to an acceptance of the claim of the plaint is too artificial to merit any consideration. While, therefore, we do not agree with some of the observations of the Calcutta High Court, we fully agree with the other part of observations where the Calcutta High Court has held that ad valorem court-fees are not payable.

Similarly, in Punjab National Bank Ltd. v. Firm Isardas Kaluram, a Full Bench of the Rajasthan High Court observed x x x x x x "We are therefore of opinion that the order passed in this case, though it finally determined the application of the appellant, was not a decree, because it did not a determine the claim which, in the circumstances in which that word has been used in s. 11(2) must relate to the existence or the amount of the debt due to the creditor.

The creditor, therefore, if he has a right of appeal, has to pay court-fee under Sch. II. Art. 11 which mentions appeals which are not preferred from a decree or an order D. having the force of a decree. Here the order, though it finally determined the application under s. 10, was not a decree; nor did it have the force of a decree for it is not strictly in accordance with the terms of s. 11(2).

x x x x x x We feel that this Act is an ameliorative measure for the benefit of displaced persons. It should be strictly interpreted, and only those orders should be considered decrees, which come strictly within the terms of s. 9, 11(2) and 14(2).

Where however the order does not come strictly within the terms of those provisions, it should not be tracted as a decree, but only as an order determining the application."

Here also a distinction was sought to be drawn between a dismissal of the application on the ground that the claimant was not a displaced person and a decision which decreed the claim on merits. Barring this disinction made by the High Court, which we do not approve, we are in agreement with the other observations made by the Full Bench which are to the effect that the order passed by the Tribunal not being a decree clearly falls within the ambit of Sch. II, Art. 11, of the Court Fees Act.

In a later decision of the same High Court in The Punjab National Bank Ltd. v. The American Insurance Company Ltd. the Court observed as follows:

> "On an analysis of section 18(2), it cannot be said that the order under appeal passed by the learned Civil Judge is a decree or order having the force of a decree. The appellant was, therefore, not liable to pay ad valorem court-fee as required under Schedule I, Art. 1, of the Court Fees Act. . . . The tribunal is competent to pass a decree only after submitting a report to the Insurance Claims Board and after receiving their proposal. If this is not done and the application is rejected on the ground that the loss did not take place in the circumstances specified in section 18(1) that order cannot be said to be a decree. The reasoning of the Full Bench case with regard to sec. 11(2) is applicable to the present case which is under sec. 18."

The Punjab High Court in S. Sohan Singh v. Liverpool and London and Globe Insurance Co. Ltd. appears to have taken the same view and observed as follows:

> "Having regard to the general purpose of the Act, which is almost entirely intended to benefit displaced persons and relieve them from the hardships consequent on their displacement, I do not think there can be any doubt that the Act was intended to benefit all displaced persons who had property in West Pakistan which suffered loss or damage and which was covered by an insurance policy entered into before 15-8-1947 and in force at the time when the loss or damage was sustained, whether this occurred before or after the 15th of August.
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> x x x x x .
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> My own view is that it was certainly never anybody's intention that displaced persons, whether debtors or creditors should have to pay 'ad valorem' court-fees on appeals against orders dismissing their applications, and I am inclined to share the view of Khosla, J., that an order dismissing an application, whether under s. 5 or s. 10 or 13, is merely a final order which does not necessitate the drawing up of any decree-sheet or amount to a decree and more particularly so in the case where an application has been dismissed, as in the present case, on a preliminary point without going into the merits at all."

We find ourselves in complete agreement with the observation made by Falshaw, J., in the decision referred to above.

Our attention was, however, drawn by the learned counsal for the respondents to three decisions of the High Court taking contrary view, namely, Kishandas v. Parasram; Nabh Raj Notan Das v. Sidhu Ram Mool Chand and Sita Ram v. Mool Chand. These decisions have on doubt held that decision of the Tribunal under the Act amounts to a decree and, therefore, does not fall within the ambit of Sch. II Art. 11 and ad valorem court-fee is payable under the Court Fees Act. We are, however, unable to agree with the view taken by these Courts. In the first place, these decisions have not taken into consideration the nature of the proceeding under the Act and the clear distinction made by the Act itself between a suit and a proceeding. These decisions have also not considered the various aspects which we have discussed above relating to the essential conditions of a decree and finally these

decisions have also overlooked the main purpose and object of the Act and seem to have also ignored the rule of strict interpretation of a fiscal statute. For these reasons, therefore, that the court-fee of Rs. 5/- paid by the appellants on the cannot be held to be good law and must, therefore, be over-ruled.

On a consideration of the facts, circumstances and the law on the subject we are clearly of the view that the memorandum of appeal in the instant case falls within the ambit of Sch. II, Art. 11, and the view of the Taxing Judge that ad valorem court-fee was payable under Sch. I, Art. 1, of the Court Fees Act was legally erroneous. We hold, therefore, that the court-fee of Rs. 5/- paid by the appellants on the memorandum of appeal was sufficient.

Before concluding we must notice an argument advanced by the learned counsel for the respondents. It was submitted that under s. 5 of the Court Fees Act a decision of the Taxing Judge as designated by the Chief Justice is final and cannot be reopened in any Court. It was submitted by Mr. Dikshit that in view of this provision the appeal to this Court by special leave was not maintainable. We are, however, unable to agree with this contention. Even though an order of the Taxing Judge may be final under s. 5 of the Court Fees Act, the power of this Court under Art. 136 granted by the Constitution will override any stamp of finality given by a statute or Act passed by Parliament. The finality which may attach under s. 5 of the Court Fees Act cannot derogate from the power conferred by the Constitution itself on the Supreme Court. Reliance, however, seems to have been placed on a decision of this Court in S. Rm. Ar. S. Sp. Satheppa Chettiar v. S. Rm. Ar. Ramanathan Chattiar and particularly on the following observations made by this Court:

> "In our opinion, the decision of the Division Bench of the Madras High Court that the memorandum of appeal should be taxed for the purposes of Court fee under s. 7(iv) (b) of the Act is final under the provisions of s. 5 of this Act. That is why we have not allowed the merits of this order to be questioned in the present appeal. We must, therefore, deal with the appellant's contention on the basis that the court fees on his memorandum of appeal must be levied under s. 7(iv) (b) of the Act."

These observations prima facia seem to support the contention of the respondents but on a closer scrutiny of the entire decision it seems to us that this Court was not at all called upon to decide the question of the effect of s. 5 of the Court Fees Act as overriding the provision of Art. 136 of the Constitution. The observations relied upon by the respondents are prefaced by the observations of Gajendragadkar, J., who spoke for the Court, where he has clearly mentioned that the Court was not called upon to consider this point, thus:

> "We are, however, not called upon to consider the point as to whether s. 7 (v) would apply to the present suit or whether the present suit would fall under s. 7(iv) (b)."

Further more, it appears that as the appellant before the Supreme Court was satisfied with the observations made by the Court, he did not press for a decision on the question of court-fees and confined his arguments only to the question as to whether the court-fees should be levied under s. 7(iv) (b) of the Court Fees Act. In these circumstances, therefore, the identical question raised before

us was neither argued nor decided in the case referred to above by the respondents. For these reasons the contention raised by the respondents on this score must be overruled.

The result is that the appeal is allowed, the order of the Taxing Judge directing payment of the ad valorem court- fees is set aside and the High Court is directed to hear and dispose of the appeal in accordance with the law on the court-fee already paid by the appellants which, in our opinion, is sufficient. In the peculiar circumstances of this case and in view of somewhat uncertain position of the state of law, we make no order as to costs.

P.B.R. Appeal allowed.