

## Sita Ram vs Mool Chand And Ors. on 22 January, 1954

**Equivalent citations: AIR1954ALL672, AIR 1954 ALLAHABAD 672**

### JUDGMENT

Harish Chandra, J.

1. This is an appeal from the decision of a Tribunal under the Displaced Persons (Debts Adjustment) Act, 1951, on an application made by a displaced creditor under Section 13 of the Act.

2. There were four respondents and notices were issued to them. Three of them did not appear. Only one of them appeared and said that he had no objection to the decree being passed as claimed. He was in the nature of a 'pro forma' respondent. A date was then fixed for the hearing of the application 'ex parte'. On that date the tribunal was of the view that the claim was not maintainable inasmuch as the three respondents who did not appear were residing in a place to which the Act did not apply. It accordingly rejected the application.

3. The question is what court-fee is payable on the appeal. The appellant has paid a court-fee as on an appeal from an order not having the force of a decree under Article 11 of Schedule II of the Court-fees Act, 1870. The ques-

tion is whether the court-fee paid by him is correct or whether he should be required to pay an 'ad valorem' court-fee under Article 1 of Schedule I as an appeal from a decree or an order having the force of a decree.

4. Learned counsel for the appellant points out that Section 40 of the Act provides for appeals both from a final decree and a final order and : that this being an appeal from a final order no 'ad valorem' court-fee is payable. He refers me to Section 27 "Contents of decrees", which requires that "in all cases in which the Tribunal passes a decree on the application of a displaced person, it shall prepare a complete schedule of the creditors and of the assets and liabilities of the displaced person". No such schedule has been prepared in the present case and he says that the order passed by the tribunal is, therefore, not a decree. He also refers to the definition of "decree" as given in Section 2(2) of the Code of Civil Procedure and says that the order passed by the Tribunal does not amount to an "adjudication conclusively determining the rights of the parties with regard to all or any of the matters in controversy" and that the order cannot, therefore, be regarded as a decree.

5. Learned Junior Standing Counsel points out that the definition, as given in the Code of Civil Procedure is no guide in the present case-inasmuch as the word "decree" is not defined in the Court-fees Act, 1870, and that it is necessary to look to the Act under which the order has been passed in order to determine whether the order is, in fact, a decree or a mere order for the purposes

of the Court-fees Act. I think that his contention is correct and that it is necessary to look to the provisions of the Displaced Persons (Debts Adjustment) Act, 1951, to find out whether the present decision of the Tribunal does or does not amount to a decree.

Section 13 is followed by Section 14 which describes the procedure on the petition of a displaced person. Sub-section (1) provides for the issue of notice to the debtor calling upon him to show cause, if any, against the application. Sub-section (3) provides that if there is a dispute as to whether the applicant is a displaced creditor or not or as to the existence of the debt or as to the amount thereof, the Tribunal shall decide the matter, after taking such evidence as may be produced before it, and pass such decree in relation thereto as it thinks fit. Sub-section (3) provides for a case in which there is either no such dispute or where the debtor has not appeared or has no cause to show. The present case will be governed by Sub-section (3) for, as we have seen, the debtors did not appear at all. The sub-section is reproduced below :

"If there is no such dispute or if the debtor does not appear or has no cause to show, the Tribunal may, after considering the evidence placed before it, pass such decree in relation thereto as it thinks fit."

It would appear that under this sub-section the order which the tribunal passes would be a decree and I do not think it will be possible to say that it is only an order. It is suggested that the decision of the tribunal in the present case may be regarded as an order rejecting the application. But, as we have seen. Section 14, which provides the procedure with respect to claims by displaced creditors against persons who are not displaced debtors, does not contemplate the rejection of an application. The rejection of an application in certain cases is, in fact, provided in Section 6 with respect to applications by displaced debtors for adjustment of debts. Such rejection of an application may amount to an order and not a decree, but no similar provision exists with respect to claims by displaced creditors made under Section 13 of the Act.

The provisions contained in Section 27 regarding the contents of decrees" are, in my opinion, not helpful in determining whether the present decision is or is not a decree. The mere fact that the decision in the present case does not contemplate the preparation of any schedule, as referred to in that section, is no reason why the decision should not be regarded as a decree. In my view, Section 14 determines the nature of the present decision by the Tribunal which should be regarded as a decree.

6. The present appeal being thus an appeal from a final decree of a tribunal, an 'ad valorem' court-fee is payable and there is, therefore, a deficiency of Rs. 1176/4/- in the amount of court-

fee paid on behalf of the appellant.

7. Three months' time is allowed for the payment of the balance of the court-fee due from the appellant.