Bulchand Chandiram Of Bombay vs Bank Of India Ltd., Fort, Bombay on 19 April, 1968

Equivalent citations: 1968 AIR 1475, 1968 SCR (3) 868, AIR 1968 SUPREME COURT 1475

Author: V. Ramaswami

Bench: V. Ramaswami, J.C. Shah, G.K. Mitter

PETITIONER:
BULCHAND CHANDIRAM OF BOMBAY

Vs.

RESPONDENT:
BANK OF INDIA LTD., FORT, BOMBAY

DATE OF JUDGMENT:
19/04/1968

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
SHAH, J.C.
MITTER, G.K.

CITATION:
1968 AIR 1475 1968 SCR (3) 868

ACT:
The Displaced Persons (Debt Adjustment) Act 70 of 1951, ss. 2(6), 17, 22, 29--'Renewal' of debt meaning of--Insurance policies whether governed by s. 17--Apportionment of liabilities between joint debtors under s. 22--Award of interest under s. 29.

HEADNOTE:
The appellant was a citizen of Pakistan and had come to India on June 6, 1950 on a temporary permit. During his absence the Pakistan Government declared him to be an evacuee. In December 1950 he was granted a Domicile Certificate and since then he continued to reside in Bombay. On May 4, 1945 the appellant had opened an account with the Bank of India (Hyderabad, Sind Branch) called the Cash

Credit Account. The amount was secured by an assignment of life insurance policies on the appellant's life and mortgage of certain immovable properties. In July 1949 the appellant took another loan of Rs. 1,25,000 from the Hyderabad Bank on the security of certain properties and the personal security of himself and his wife. On July 22, 1952 the appellant mads an application under s. 5 of the Displaced Persons (Debt Adjustment) Act, 1951 for adjustment of his debts against several creditors, but pressed it only against the Bank. Against the trial court's judgment both parties appealed to the High Court. The High Court's judgment was challenged by the appellant in this Court. It was contended on behalf of the appellant, inter alia : (i) That no interest should have been allowed to the Bank from August 15, 1947 in view of the provisions of s. 29 of the Act; (ii) That the liability on the Cash Credit Account and on the Loan Account was not the sole responsibility of the appellant but was a joint liability and the High Court should have apportioned the joint debt under s. 22, without construing that section with the aid of s. 43 of the Indian Contract Act; (iii) That the insurance policies did not fall under s. 17 of the Act and the appellant was entitled to a refund of the amount recovered from them; and (iv) That the High Court erred in interpreting the word 'renewal' occurring in the definition of s. 2(6).

HELD : (i) Proviso (b) to s. 29(1) of the Act confers a discretion on the Tribunal to allow interest not exceeding 4 per cent per annum for the period from August 15, 1947 up to December 10, 1951, the date on which the Act came into force in Bombay after taking into account the paying capacity of the debtor as defined in s. 32. In the present case the Hi Court had on the statement of the appellant himself found his paying capacity to be far in excess of the debts due 'from him, and it was therefore a fit case in which interest at 4 per cent should be allowed to' the Bank from August 15, 1947 to December 10, 1951. [876 A-D]

(ii)Even assuming that s. 43 of the contract is not relevant for the construction of s. 22 of the Act the plea of the appellant for apportionment of the debt must be rejected because from his own pleadings it was apparent that the liability both on the Loan Account and on the Cash Credit Account was undertaken solely by the appellant. There was no justification for interfering with the finding of the High Court in this respect. [876 E-H]

869

(iii) The insurance policies were 'movable property'as defined in s. 3 of the General Clauses Act. In the present case there was an absolute assignment of the policies in favour of the Bank and the policies were also in its possession. Section 17 of the Act therefore applied and unless realisation under the policies was in excess of the debt due the appellant was not entitled to refund. [877 F-G]

(iv) The confirmation or acknowledgement of indebtedness

cludes both loan and interest and further advance if any within the ambit of the expression renewal in the proviso the Act. The liability referred to in the proviso is the liability solely by way of renewal and the proviso to the section states that the original loan and not the one for which the renewal is made is the debt within the meaning of the section. But the proviso does not apply if the confirmation or acknowledgement is not solely by way of renewal on accoust of loan or interest but includes further advance. The High Court was justified in determining the appellant's debts on this view. [877 H; 878 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 690 of 1967. Appeal from the judgment and decree dated November 16, 1962 of the Bombay High Court in Cross Appeals Nos. 756 and 791 of 1957.

M. C. Chagla and B. R. Agarwala, for the appellant. S. T. Desai, Bhuvnesh Kumari, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the respondent. The Judgment of the Court was delivered by Ramaswami, J. This appeal is brought, by certificate, from the judgment of the Bombay High Court dated November 16, 1962 in Cross Appeals Nos. 756 and 791 of 1057. The appellant, Bulchand Chandiram was a citizen of Pakistan and had come to India on June 6, 1950 on a temporary permit. During his absence the Pakistan Government declared him to be an evacuee. In December, 1950 he was granted a Domicile Certificate and since then he has been residing in Bombay. On May 4, 1945 the appellant had opened an account with the Bank ,of India (Hyderabad Sind Branch) called the Cash Credit Account. The account was secured by an assignment of life insurance policies on the appellant's life of about RS. 79,000 and mortgage of immoveable properties 1 to 5 in Sch. F'. Between March and April 1947 properties 4 and 5 were sold and the appellant paid Rs. 35,000 to the Bank. In this account on December 31, 1949 the amount due to the Bank was Rs. 1,06,281-12-11 (Item No. 36) and on April 22, 1950 the amount due was Rs. 1,07,969/ 15/ 11 (Item No. 44). In July 1949 the appellant took a loan of Rs. 1,25,000 from the Hyderabad Branch on the security of properties mentioned in Sch. 'G and the personal security of himself and his wife. In early 1948 this Branch was closed and so the account was transferred to the Karachi Branch. In, this account on December 31, 1949 the amount due was Rs. 1,33,655/11/- and as on April 22, 1950 the amount due was Rs. 1,35,735/13/- (Item No. 45). On July 22, 1952 the appellant made an,application under s. 5 of the Displaced Persons (Debts Adjustment) Act, 1951 (Act No. LXX of 1951), hereinafter referred to as the " said Act" for adjustment of his debts against several creditors. During the hearing of the application the appellant only pressed the application against the Bank and not against his other creditors. The appellant alleged that the Bank had realised two of the in- surance policies and had recovered some other amounts. It was also said that the Bank had received the rent of the properties from Pakistan after they were declared evacuee properties. The appellant claimed that the Bank was also not entitled to claim interest after August 15, 1947. He further alleged that the additional security on property No. 6 in the Schedule was obtained by the Bank by undue influence and coercion and hence the security to that extent was illegal and inoperative. The Bank contested the

application on several grounds. According to the Bank the properties of the appellant left in Pakistan were worth only Rs 4,00,000. The Bank also alleged that the value of the assets of the appellant was not correctly shown. It admitted the realisation of Rs. 24,700 on the maturity of the policies and stated that it had credited the appellant with the converted value in Pakistan rupees since the amount was transferred to Karachi when the Bank received the assent of the Controller of Foreign Exchange. The Bank contended that on June 30, 1952 the amount due in respect of the Cash Credit Account was Rs. 1.,22,160/2/11 and in the loan account Rs. 1,52,622/12/- with interest at one per cent over the Bank rate. It was contended for the Bank that if the appellant was held entitled to the protection of the said Act the Bank chose to act under s. 16 of the said Act to retain the security and win also be entitled to full amount of the insurance policies. Upon these rival contentions of the parties the trial court held that the appellant was a displaced person, that he was entitled to dispute the amount due even though acknowledgements were signed, that the debts were liable to be adjusted as joint debts and apportioned between the debtors, that the insurance policies were moveable properties for the purpose of s. 22 of the said Act but not for the purpose of s. 17 and that the appellant was entitled to a credit of Rs. 17,126/9/4 in respect of the amount realised on the maturity of the insurance policies. The trial Judge accordingly held as below in respect of the Cash Credit Account Rs. a. P. "Amount due as principal up to 10th December 1951 89,601-11-11 Interest up to 10th December 1951 20,490- 4- 0 Expenses 240-13- 0

	1,10,332-12-11
Less rent realised and amount of reversed entries	860-10- 0
	1,09,472- 2-11"

On apportionment the trial Judge held that a sum of Rs. 13,684/ 2/11 was recoverable out of life policies and Rs. 95,788/- from immoveable properties. The liability of the appellant being 1/3rd, the trial Judge held him liable for Rs. 3 6,490/ 11 / 11. In respect of the loan account the trial Judge held as follows Rs. a. P. The amount due in that account up to 10th December 1951 1,20,704-11-0 Interest up to 10th December 1951 20,896- 0-0 Bxpenses 38- 6-0

	1,41,639- 3-0
Less rent received	1,621-15-0
	1,40,017- 4-0"

The trial Judge held that the appellant was liable for Rs. 70,008-10-0 there being two joint debtors. Against the decision of the trial Judge the Bank preferred Appeal No. 756 of 1957 and the appellant Bulchand Chandiram preferred Appeal No. 791 of 1957 in the. Bombay High Court. The High Court held that on June 30, 1948 there was due to the Bank in the Cash Credit Account a sum of Rs. 1,02,902/7/11 and after the said date there were renewals only or confirmations of liability and there

was a Promissory Note in respect of the said liability dated November 18, 1947 to the extent of Rs. 1,09,000/- and the High Court was not entitled to go behind that date. The High Court further held that in respect of the loan account a loan to the extent of Rs. 1,25,000 was taken on July 12, 1947 and there was a Promissory Note in respect thereof dated June 19, 1947. The High Court held that the trial court was justified in awarding it at 4 per cent from August 15, 1947 to December 10, 1951 which was the date of the commencement of the said Act, under the provisions of. s. 29 of the said Act. Regarding the question of apportionment the High Court came to the conclusion, after examining the evidence, that the appellant was alone liable for the debts and no question therefore arose of apportionment of liability. The High Court also examined the provisions of S. 17 of the said Act and held that the insurance policies were moveable properties within the meaning of that section and there was 'a valid pledge in respect thereof. The High Court ultimately held that in respect of the Cash Credit Account the Bank was entitled to. a sum of Rs. 1,09,273.65 and in respect of-the loan account the: Bank was entitled to Rs. 1,47,068.49.

It is necessary at this stage to set out the material provisions of the said Act. Section 2 (6) defines. a "debt" as follows :

> " 'debt' means any pecuniary liability, whether payable presently or in future, or under a decree or order of a civil or revenue court or otherwise, or whether ascertained or to be ascertained, which-
>
> and includes any pecuniary liability incurred before the commencement of this Act by any such person as is referred to in this clause which is based on, and is solely by way of renewal of, any such liability as is referred to in subclause
>
> (a) or sub-clause (b) or sub-clause (c) :
>
> Provided that in the case of a loan, whether in cash or in kind, the amount originally advanced and not the amount for which the liability has been renewed shall be deemed to be the extent of the liability;
>
> Section 3 states "Over-riding effect of Act, rules and orders.- Save as otherwise expressly provided in this Act, the provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any decree or order of a court, or in any contract between the parties."

Section 5 enables a displaced person to make an application for adjustment of debts to the proper Tribunal. Section 15 prescribes the consequences of an application by the displaced debtor and states that no proceedings can thereafter be taken against him for realisation of the debt. Section 16 gives an option to the creditor to elect as to whether he would retain the security in West Pakistan, and if he does so the section prescribes the, consequences of such election on the part of the creditor. The section gives a first charge to the secured creditor on the amount of the compensation to which the debtor would be entitled to be paid for his properties left in Pakistan. But the amount

in respect of which charge is given is in the same proportion of the debt as the actual compensation bears to the verified claim in respect of the properties. If property is given in exchange then charge is given in respect of the debt in the same proportion as the property given bears to the verified claim. section 17 relates to the debt secured by the pledge of moveable property and provides as follows :

> "17. Debts secured on moveable property.-(1) Where in respect of a debt incurr ed by a displaced debtor and secured by the pledge of movable property belonging to him, the creditor had been placed in possession of such property at any time before the debtor became a displaced person, the following rules shall regulate the rights and liabilities of the creditor and the debtor, namely :--
>
> (a) the creditor may, if he is still in possession of the pledged property, realise the sum due to him by the sale of such property after giving to the debtor reasonable notice of the sale;
>
> (b) the creditor shall not be entitled, in any case where the pledged property is no longer in his possession or is not available for redemption by the debtor, to recover from the debtor the debt or any part thereof for which the pledged property was security;
>
> (c) the debtor shall not be liable, in the case of a sale by the creditor of any pledged property, whether under clause (a) or otherwise, to Day I the balance where the proceeds of such sale are less than the amount of the debt due-,
>
> (d) the creditor shall, in any case where the proceeds of the sale of the pledged property are greater than the amount of the debt due, pay over the surplus to the debtor. (2) Notwithstanding anything contained in this section, the creditor shall be entitled to receive, and to give a valid discharge in respect of, any sum due under this Act or under any other law for the time being in force from an insurance company in respect of any claim arising out of the loss or destruction of the pledged property, but the creditor shall, in any case where the sum received from the insurance company is greater than the amount of the debt due to him, pay over the surplus to the debtor."

Section 22 relates to apportionment of joint debts and reads as follows "Where a debt is due from a displaced person jointly with another person, the Tribunal shall, for the purposes of this Act, apportion the liability between them according to the following rules, namely :-

> (a) if the liability of each debtor is defined, then according to the defined share of each;
>
> (b) if the debt was taken for any trade or business of the joint debtors, then according to the shares held by each of the joint debtors in the trade or business;'

(c) if the debt was not taken in any defined shares or for any trade or business in which the partners have any defined share, the debt shall be apportioned into as many parts as there are joint debtors, and each joint debtor shall be liable only for the part apportioned to him;

(d) if one joint debtor is a displaced person and another is not, the sum apportioned to the nondisplaced person shall not be deemed to be a debt within the meaning of this Act and the creditor may in respect of such debt seek any remedy open to him in a civil court or otherwise;

(f) if the liability is secured by a mortgage of movable and immovable properties, the debt shall be apportioned between the two properties in the same proportion as the value of each property bears to the total value of the properties;

(g) where the relationship between the, joint debtors is that of principal and surety, nothing contained in this Act shall prevent the institution of a suit for the recovery of the debt against the surety but no decree shall be, passed in such suit for an amount in excess of the amount decreed or which can be decreed against the principal debtor in accordance with the provisions of this Act Provided that the total amount which may be recovered from the principal debtor and the surety shall not exceed the amount decreed or which can be decreed by the Tribunal against the principal debtor in accordance with the provisions of this Act."

Section 29 makes provision for cesser of accrual of interest. It states :

"(1). On and from the 15th day of August, 1947, no interest shall accrue or be deemed to have accrued in respect of any debt owed by a displaced person, and no Tribunal shall allow any future interest in respect of any decree or order passed by it:

Provided that--

(a) where the debt is secured by the pledge of shares, stocks, Government securities or securities of a local authority, the Tribunal shall allow, for the period commencing from the 15th day of August, 1947, and ending with the date of commencement of this Act, interest to the creditor at the rate mutually agreed upon or at a rate at which any dividend or interest has been paid or is payable in respect thereof, whichever is less;

(b) in any other case the Tribunal may, if it thinks it just and proper to do so after taking into account the paying capacity of the debtor as defined in section 32, allow, for the period mentioned in clause (a), interest at a rate not exceeding four per cent. per annum simple.

(2) Nothing in this section shall apply to the interest payable in respect of any monies advanced by a creditor, including an insurance company, on the security of a policy of

life insurance of a displaced debtor in order to keep it alive."

Section 49 reads as follows "Past transactions not to be affected.-(1) If before the commencement of this Act a displaced debtor has satisfied or discharged any of his liabilities in any manner whatsoever, such transactions shall not be affected by anything contained in this Act. (2)Where the Tribunal has determined the amount due in respect of any debt in accordance with the provisions of this Act, any payments (including payments by way of interest) made by the displaced debtor towards the debt prior to such determination shall be adjusted towards the amount so determined :

Provided that no creditor shall be called upon to refund any amount paid to him if it is found that it is in excess of the amount determined as being due to him under this Act."

In support of this appeal Mr. Chagla contended, in the first place, that no interest should have been allowed to the Bank from August 15, 1947 in view of the provisions of s. 29 of the said Act. We are unable to accept this argument as correct. Proviso, (b) to s. 29(1) of the said Act confers a discretion on the Tribunal to allow interest not exceeding 4 per cent. per annum for the period from August 15, 1947 up to December 10, 1951, the date on which the said Act came into force in Bombay after taking into account the, paying capacity of the debtor as defined in s. 32 of the Act. The expression "paying capacity of the debtor", is defined in S. 32 of the said Act as follows :

"the aggregate of the market value of all-the attachable assets in India of the displaced debtor plus the income which is likely to accrue to him for the next three years succeeding, excluding from the computation of such income a sum calculated at the rate of two hundred and fifty rupees a month."

The High Court has observed, on the statement of the appellant himself, that his paying capacity far exceeded the aggregate debt due from him and it was therefore a fit case in which interest at 4 per cent, should be allowed to the Bank from August 15, 1947 to December 10, 1951. In our opinion, the finding of the High Court on this point is supported by proper evidence. We accordingly reject the argument of the appellant on this aspect of the case. We shall then proceed to consider the next contention put forward on behalf of the appellant, namely, that the liability on the Cash Credit Account and on the Loan Account was not the sole liability of the appellant alone but was a joint liability and the High Court ought to have apportioned the joint debt under s. 22 of the said Act between the appellant and the, joint debtors. It was argued on behalf of the appellant that the High Court fell into an error in construing the provisions of s, 22 in the context of s. 43 of the Indian Contract Act which states that "when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisers to perform the whole of the promise". Mr. Chagla contended that this section has no application in view of the over-riding effect of s. 3 of the said Act. It is not necessary, in our opinion, to decide this point in the present case. We shall assume in favour of the appellant that S. 43 of the Indian Contract Act has no application. Even upon that assumption the plea of the appellant for

apportionment of the debt must be rejected because the High Court has found upon examination of the evidence, that the liability both on the Loan Account and on the Cash Credit Account was undertaken solely by the appellant. The finding of the High Court on this point is supported by paragraphs 12 and 15 of the petition of the appellant. In these two paragraphs the appellant admitted that he had opened the Cash Credit Account with the Bank and that he had taken the loan against mortgaged securities mentioned in Sch. G to the petition. We see no reason for differing from the finding of the High Court. The liability on the Loan Account and on the Cash Credit Account was solely that of the appellant and therefore the question of apportionment of the debt under s. 22 of the said Act does not arise.

The next question arising in this appeal is whether the appellant is entitled. to a refund of the amount recovered from the insurance policies. It appears that there were 12 life policies mentioned in Sch. 'E' of the application out of which two policies matured in 1950 and 1951 and the rest matured during the pendency of the application of the appellant. The Bank received Rs. 1,000 and Rs. 23,700 on January 22, 1951 and July 9, 1952. In 1948 the appellant had executed absolute assignment in respect of all the policies in favour of the Bank. Since the amounts were due to the Karachi Branch, these were converted into Pakistan rupees and repatriated. In respect of the other policies the Bank- recovered the-additional amount of Rs. 25,684.56 P and Rs. 15,560.99 P. The trial court held that as regards the first two policies, the appellant is not entitled to refund of excess amount over the apportioned debt of Rs. 13,684/2/11 but in respect of other policies the trial court held that the Bank was bound to refund the excess amount. In appeal the High Court has, however, taken the view that s. 17 of the said Act applied and the appellant had no right to refund in respect of any of the insurance policies unless it was shown that the realisation was in excess of the debt due. It was argued by Mr. Chagla that the insurance policies do not fall within s. 17 of the said Act. It is not possible to accept this contention as correct. Clause 36 of s. 3 of the General Clauses Act (Act X of 1897) defines "movable property" to mean "property of every description, except immovable property". Clause 26 of s. 3 of the General Clauses Act defines "immovable property" to "include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth". In the present case there is the additional fact that the policies were assigned by the appellant and his wife to the Bank and thereafter the insurance policies remained in possession of the Bank. In the present case therefore there is an absolute assignment of the policies in favour of the Bank and the policies were also in its possession. In our opinion, s. 17 of the Act applies and unless realisation was in excess of the debt due the appellant was not entitled to refund. We accordingly reject the argument of the appellant on this aspect of the case.

It was also contended on behalf of the appellant that the High Court had erred in interpreting the word "renewal" occurring in the definition of the word "debt" in the said Act. In our opinion, there is no substance in this argument. It is manifest that the confirmation or acknowledgement of indebtedness which includes both loan and interest and further advances, if any would not fall within the ambit of the expression "renewal' in the proviso to s. 2 (6) of the said Act. The liability referred to in the proviso Is the liability solely by way of renewal and the proviso to the section states that the original loan and not the one for which the renewal is made is the debt within the meaning of the section. But the proviso does not apply if the confirmation or acknowledgement is not solely by way of renewal on account of loan or interest but includes further advance. In our opinion the

High Court was justified in coming to the conclusion that the debts ascertained by it were the debts of the appellant within the meaning of the said Act. The High Court found that the promissory note dated November 18, 1947 for a sum of Rs. 1,09,000 represented the debt of Rs. 1,09,000 in the Cash Credit Account and that the promissory note dated June 19, 1947 for a sum of Rs. 1,25,000 represented the debt of Rs. 1,25,000 in the Loan Account which was actually taken on July 12, 1947. As regards the Cash Credit Account, the High Court awarded simple interest up to December 10, 1951 at 4 per cent. which worked out to Rs. 17,702.79 P and held that an aggregate amount of Rs. 1,26,702.79 P was due by the appellant in the said Cash Credit Account. As regards the Loan Account, the High Court awarded simple interest at 4 per cent. from July 12, 1947 up to December 10, 1951 and held that an aggregate amount of Rs. 1,47,068.49 P was due by the appellant. The debt in the Cash Credit Account was reduced by a deduction of Rs. 17,429.14 P (which represented the proportion of the verified claim to the surrender value of the policies) to Rs. 109,273.65 P. Lastly, Mr. Chagla submitted that the appellant should have been given credit of the amount of Rs. 10,000 paid to the Bank as income of the mortgage properties in Pakistan. It was pointed out that the amount was received as income of the mortgaged properties by the Custodian of Evacuee Properties in Pakistan and the amount was paid by the Pakistan Government to the Bank. It was argued that there was no justification for not allow respect of this amount. It is not necessary for us to go into the merits of this question because Mr. S. T. Desai on behalf of the respondent-Bank said that he had no objection if the amount of Rs. 10,000 was credited towards the debt of the appellant as determined by the High Court. We accordingly direct that the amount of Rs. 10,000 should be credited towards the amount of debt ascertained according to the High Court judgment.

Subject to this modification we affirm the judgment and decree of the Bombay High Court and dismiss this appeal. There will be no order as to costs of this appeal in this Court-

Appeal dismissed.

R.K.P.S. L8Sup.C.I./68-2,500--22-2-59-GIPF.