APPEAL FROM ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

GIRDHARLAL B. BHATIA, APPELLANT (ORIGINAL 1ST DEFENDANT) *v.* MANGHRAM JEEVANDAS, RESPONDENT (ORIGINAL PLAINTIFF).* 1955 Oct. 7

Displaced Persons (Debts Adjustment) Act (LXX of 1951), ss. 22; 3, 5 and 9—Indian Partnership Act (IX of 1932), s. 25—Joint debt due by partnership consisting of two partners—Creditor's suit against both partners for recovery of debt—One partner being displaced person applying for adjustment of debt to Tribunal under Act—Whether suit against other partner should be stayed?

The Displaced Persons (Debts Adjustment) Act 1951 does not absolve a non-displaced person from any of his liability, even though he has incurred such liability jointly with a displaced person.

Section 22 of the Act does not affect in any way the creditor's right to sue the non-displaced person and recover the whole amount from him.

Quare, whether the right of a non-displaced person, who has been compelled to pay the whole of the debt incurred by him jointly with a displaced person to seek contribution from the latter is affected by the Act.

After the creditor had filed a suit for recovery of a debt due by a partnership consisting of two partners, one of the partners, being a displaced person, applied to the Debt Adjustment Tribunal under the Displaced Persons (Debts Adjustment) Act, 1951 for adjustment of his debt, and consequently the suit as against him was stayed. At the hearing of the suit, the other partner who was not a displaced person contended that the suit as against him should also be stayed till the Tribunal had disposed of the application of his partner. The trial Court negatived the contention and passed a decree against him for the whole amount. On appeal,

Held, affirming the order of the trial Court, that the plaintiff was entitled to proceed against the non-displaced person for the recovery of the whole amount of the debt.

Facts are sufficiently stated in the Judgment.

D. N. Abhichandani, for the Appellant.

K. T. Desai, with *A. Motwani,* for the Respondent.

Chagla C. J.—A rather interesting question arises in this appeal as to the liability of a non-displaced person with regard to a debt for which he is liable jointly and severally with a displaced person.

The two defendants to the suit, from which this appeal arises, carried on business in the name and style of Hirdaram Bahrumal Bros., at Quetta and Sukkur and they passed ten promissory notes for Rs. 10,000 each in favour of various persons and those persons endorsed the promissory notes in favour of the plaintiff and the plaintiff filed a summary suit on these ten promissory notes. The second defendant, who is a displaced person, applied to the Tribunal set up at Jodhpur for the adjustment of debts of displaced persons, for the adjustment of his debts, and the

*O. C. J. Appeal No. 15 of 1955 ; Suit No. 1006 of 1950.

1955

GIRDHARLAL B. BHATIA v. MANGHRAM JEEVANDAS

Chagla C. J.

suit with regard to him was stayed in this Court. When the suit came on for hearing as against the first defendant, who as just pointed out is not a displaced person, he raised a contention that even with regard to him the suit should be stayed till the Debt Adjustment Tribunal had disposed of the application made by the second defendant. That contention was rejected by the learned Judge Mr. Justice Desai and he passed a decree in favour of the plaintiff, and the first defendant has come in appeal.

It is not disputed that under general law the liability of the first and the second defendants is joint and several and that the plaintiff could have enforced his liability either against the first defendant or the second defendant or against both. But what is urged is that by reason of the provisions of the Displaced Persons (Debts Adjustment) Act (Act LXX of 1951) this principle of general law has been abrogated, and attention is drawn to s. 3 which is an overriding section, and it provides:

> "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."

What is urged is that by reason of the provisions of this section, s. 25 of the Partnership Act, which provides that every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner, is abrogated. It is perfectly true that if we find anything in the provisions of the Displaced Persons (Debts Adjustment) Act which is inconsistent with any other law for the time being in force, to the extent of that inconsistency the provisions in the Displaced Persons (Debts Adjustment) Act must prevail. But our attention must be drawn to some inconsistency in the Displaced Persons (Debts Adjustment) Act and we asked Mr. Abhichandani to point out any provision in this Act which would lead us to the conclusion that the provisions of s. 25 of the Partnership Act have been abrogated, and that when there is a partner who is a displaced person the liability of the non-displaced partner is not joint and several. The answer given by Mr. Abhichandani is that looking to the scheme of the Act that position arises.

It is never very safe to talk generally and vaguely about the scheme of an Act. One must look to the specific provisions of the Act when one is being asked to abrogate a principle established under the ordinary law of the land, and even if one were to look at the scheme of the Displaced Persons (Debts Adjustment) Act, the scheme is clear from the preamble and the scheme and the object is that the Act has been put on the statute book for the adjustment and settlement of debts due by

displaced persons. It is an Act for the relief of displaced persons and not for the relief of non-displaced persons. It is an Act to absolve displaced person from his liability either in whole or in part. It is not an Act to absolve a non-displaced person of any of his liability. Attention is drawn to s. 9 of the Act where it is provided that certain persons become respondents to this application, and it is said, and rightly said, that by reason of s. 5 where the displaced person has to set out in his application the debts due by him including joint debts, the joint debtor of the displaced person becomes a respondent to the application made by the displaced person for the adjustment of his debts, and Mr. Abhichandani is quite right when he contends that by reason of s. 5 and s. 9 the first defendant, his client, became a party respondent to the application made by the second defendant for the adjustment of his debts. Then reliance is placed on s. 22 and that section deals with apportionment of joint debts and the scheme is that a displaced person is only liable to pay a portion of a joint debt which he owes himself with another person, and even after the apportionment has been made, according to the rules laid down in s. 22 he is liable to pay not the whole of the apportioned debt but only such portion thereof as has been ultimately adjusted according to the provisions of the Act. Therefore, considerable relief is given to a displaced person when he is jointly and severally liable with a non-displaced person, and the relief is that the general law which makes him liable concurrently with his joint debtor is abrogated to the extent that his liability is reduced as just mentioned. But what we are concerned with is not the liability of the displaced person but the liability of the non-displaced person, and for that purpose Mr. Abhichandani relies on cl. (*d*) of s. 22 and that clause provides:

> "(d) if one joint debtor is a displaced person and another is not, the sum apportioned to the non-displaced 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."

Mr. Abhichandani wants us to read this provision to mean that when the apportionment takes place the right of the creditor to proceed against the non-displaced person who is a joint debtor is limited to the amount apportioned and coming to his share. If Mr. Abhichandani was right it would indeed be a very startling conclusion to come to that the Displaced Persons (Debts Adjustment) Act should have absolved a non-displaced person from his liability in respect of a joint and several debt. But it is clear that the language of cl. (*d*) of s. 22 does not lead to any such conclusion. Section 22 having dealt with apportionment of a joint debt between a displaced person and a non-displaced person, had specifically to provide that to the extent that a certain sum is apportioned to a non-displaced

1955

GIRDHARLAL B. BHATIA v. MANGHRAM JEEVANDAS

Chagla C. J.

person that sum shall not be looked upon as a debt within the meaning of the Act, in other words, that debt cannot be adjusted, and for caution's sake the Legislature went on to say that to the extent that the sum was apportioned to the non-displaced person the creditor's remedy against him remained unaffected. That does not mean that the creditor's remedy against the non-displaced person with regard to the sum apportioned to the displaced person was in any way affected by this provision and that the plaintiff in this case had not the right to recover the whole sum of Rs. 1,00,000 from the first defendant. The second defendant being a displaced person was given the right firstly to have this debt apportioned and to the extent of the apportionment and the adjustment the plaintiff's right against the second defendant was cut down. But to the extent that the plaintiff had the right to go against the first defendant who is a non-displaced person and to recover the debt in full from him, that right was not only not affected by s. 22 but s. 22 does not even deal with that right.

It is strenuously urged by Mr. Abhichandani that if we took this view we would be seriously prejudicing the rights of the displaced person. It is our concern and indeed our duty, when a displaced person is before us, to see that the Act is construed in a manner which will be beneficial to him. But this strange solicitude on the part of a non-displaced person for the interest of a displaced person is rather suspicious. Mr. Abhichandani's client really vicariously wants the benefit from the misfortunes of the second defendant, and the argument put forward by Mr. Abhichandani is this that if a decree were to be passed in this Court against the first defendant for the full amount, as indeed it has been passed, he would have a right of contribution against the second defendant, and inasmuch as that debt could not be adjusted the displaced person would be prejudiced, and although his share was apportioned yet in a suit for contribution he may be liable to pay more than the share apportioned to him. We are not concerned in this appeal with the consequences that might ensue by reason of a decree being passed against a non-displaced person. We do not know what answer the displaced person may have if the first defendant, notwithstanding his sympathy for the displaced person, should choose to file a suit against him for contribution, and it would be idle to speculate as to whether the Displaced Persons (Debts Adjustment) Act has or has not provided for this particular case of hardship against a displaced person.

A point was also sought to be made by Mr. Abhichandani that the Tribunal under the Displaced Persons (Debts Adjustment) Act may come to the decision that no debt was due on these promissory notes and the Court here may come to a contrary conclusion. But there is nothing in the Displaced

Persons (Debts Adjustment) Act which binds civil Courts in suits against non-displaced persons in respect of decisions given by the Tribunal in adjusting the debts of displaced persons. It is desirable to prevent inconsistency and conflicting decisions between two different Tribunals in the country, but if such an inconsistency is unavoidable the Court must face it, but certainly should not avoid an inconsistency at the cost of the vested rights of the creditor to enforce his debt against a non-displaced person.

In our opinion the learned Judge was right in the conclusion he came to. The result is that the appeal fails and must be dismissed with costs.

Liberty to the respondent's attorneys to withdraw the sum of Rs. 500 deposited in Court and appropriate the same in part satisfaction of the costs herein.

Attorneys for Appellant: *Ghandhy & Co.*

Attorneys for Respondent: *Ambubhai & Diwanji.*

Appeal dismissed.

P. M. P.

APPELLATE CIVIL

Before Mr. Justice Gajendragadkar and Mr. Justice Gokhale.

1955
Aug. 19

RANA HARKISHANDAS LALLUBHAI AND OTHERS (ORIGINAL OPPONENTS NOS. 2 TO 5), APPELLANTS *v.* RANA GULABDAS KALYANDAS AND ANOTHER (ORIGINAL PLAINTIFF-JUDGMENT CREDITOR AND OPPONENT NO. 1), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), O. XXI, R. 50 (2), O. XXX—Scope and limits of enquiry under—Execution—Leave to execute a decree against its partners of a Firm—Whether partners can raise a general issue as to liability—Scheme of O. XXX.

In an enquiry contemplated under O. XXI, R. 50 (2) the only plea on which an opponent may oppose the proceedings is the denial of the allegation made by the decree-holder that he was a partner of the firm sued. If the plea fails, the execution will proceed against the person shown to be a partner; if on the other hand, the plea succeeds no leave under O. XXI, R. 50 (2) can be granted.

Bhagvan v. *Hiraji*,[1] dissented from.

Datoobhoy v. *Vallu*,[2] *Davis* v. *Hyman & Co.*,[3] discussed.

*First Appeal No. 224 of 1953.

1. (1932) 34 Bom. L. R. 1112. 2. (1899) 1 Bom. L. R. 828.

3. (1903) 1 K. B. 854, 856.