

INDIAN INDEPENDENCE PAKISTAN COURTS (PENDING PROCEEDINGS) ACT, 1952

9 of 1952

[23rd February, 1952]

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STATEMENT OF OBJECTS AND REASONS "Special Orders were passed under Independence Act, 1947, providing for the continuance of proceedings in Courts in Bengal, Assam and Punjab which, by reason of partition, became proceedings pending in Courts in the Dominion of Pakistan and the Dominion of India respectively. These Orders further provided that effect shall be given within the territories of one Dominion to any judgment, decree or order of any Court in the other Dominion passed in such pending proceedings as if it had been passed by a Court of competent jurisdiction within that Dominion. Considerable difficulties have been and are being experienced by the Government of India in defending suits and proceedings pending in Pakistan Courts to which the Government is a party. The Governmental machinery for legal aid in Pakistan is not available and until recently there was no regular arrangement for obtaining legal aid in Pakistan on behalf of the Central Government. Even when an advocate was available, it was often found difficult to send instructions to him in time. Consequently, in many cases the Government could not be properly represented; and, further,

certain decisions leave behind a feeling that the cases have not been properly dealt with by those Courts. The same difficulties are being experienced by the Governments of Punjab, West Bengal and Assam in suits against them which were pending in Pakistan Courts on the date of partition. Although there is no reason to think that any similar difficulties exist in India in respect of the far fewer proceedings pending against any Pakistan Government in this country, Pakistan has thought fit to provide, in language somewhat obscure, that no decree or order passed by a Court in India in such proceedings shall receive any effect in Pakistan; vide Pakistan (Indian Independence Legal Proceedings) Order, 1948, and the Pakistan High Courts (Bengal) Order, 1949. Any doubt as to the intention underlying these Orders has been completely dispelled by a statement of the Advocate- General of East Bengal who, appearing in a recent case before the Supreme Court, relied on these Orders for the proposition that any decree that might eventually be passed by an Indian Court in such pending proceedings would not be given effect to in Pakistan. It is necessary, therefore, that the position of the Government of India and the three State Governments concerned should be safeguarded so that decrees and orders of Pakistan Courts in proceedings pending before those Courts on the date of partition may not be automatically executable in India. Legislation overriding the Orders under the Indian Independence Act is necessary for this purpose. No other decrees require any such safeguards because they are not automatically executable in India. In order that this legislation does not work hardship in the case of persons in India who may have obtained decrees in Pakistan against a Government in India, an alternative remedy by way of suit in this country is being provided in clause 4 of this Bill, and the bar of local jurisdiction and limitation is being waived in such cases. In view of the urgency of the matter an Ordinance on the above lines was promulgated on the 29th October, 1951, and the present Bill, when passed, will repeal and replace that Ordinance."-Gazette of India, 9-2-1952, Pt. II, S. 2, p.22.

1. Short title :-

This Act may be called the Indian Independence Pakistan Courts (Pending Proceedings) Act, 1952.

2. Definition :-

In this Act, the expression "decree to which this Act applies" means any such judgment, decree or order as referred to in -

(i) clause (3) of Article 4 of the Indian Independence (Legal Proceedings) Order, 1947, or

(ii) paragraph (5) or paragraph (6) of Article 13 of the High Courts (Bengal) Order, 1947, or

(iii) paragraph (4) or paragraph (6) ¹ [of Article 13] of the High Courts (Punjab) Order, 1947,

which has been or may hereafter be passed by a Court in Pakistan and which imposes any liability or obligation on a Government in India.

1. Inserted by the Repealing and Amending Act 1952 (48 of 1952), Sec. 3 and Schedule II (2-8-1952).

3. Certain Pakistan decrees not to be given effect to in India :-

Notwithstanding anything contained in any of the Orders referred to in section 2 , no decree to which this Act applies shall be given effect to by any Court or authority in India in so far as such decree imposes any liability or obligation on any Government in India.

4. Right of holder of a decree to which this Act applies to institute fresh proceedings in India :-

Notwithstanding anything contained in S.3 of the Limitation Act, 1908, any person in whose favour a decree to which this Act applies has been passed may, within one year from the commencement of this Act, or within one year from the date of the decree, whichever is later, institute a fresh suit or other legal proceeding in respect of the cause of action on which such decree was based, and any such suit or other legal proceeding may, notwithstanding anything contained in Section 20 of the Code of Civil Procedure, 1908 , or in any other law or in any agreement to the contrary relating to the place of suing, be instituted in any Court otherwise competent to try it, within the local limits of whose jurisdiction the person instituting it voluntarily resides or carries on business or personally works for gain.

5. Repeal of Ordinance VI of 1951 :-

Repealed by the Repealing and Amending Act, 1957 (36 of 1957), S.2 and Sch. I (17-9-1957).]