

Ram Swarup Vs. Devi Das

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Court : Allahabad

Decided On : Sep-15-1938

Reported in : AIR1939All17

Appellant : Ram Swarup

Respondent : Devi Das

Judgement :

ORDER

Mohammad Ismail, J.

1. This is an application in revision directed against an order of the Court below. The facts of the case have been fully set out in the order of the learned District Judge and need not be recapitulated in detail. It appears that Devi Das, the opposite party, made an application to the Collector under Section 4, Encumbered Estates Act. The application in due course was transferred to the Special Judge and a date was fixed for filing the written statement and depositing publication charges. The applicant on the date fixed failed to appear with the result that the application was dismissed by the Special Judge. On 8th July 1937, the applicant made an application for the restoration of his application and the learned Special Judge considered that sufficient cause was made out, and therefore restored the application. On appeal the order of the Special Judge was affirmed by the learned District Judge. The creditor now comes to this Court in revision.

2. It is argued that the order of the Special Judge was entirely without jurisdiction and the learned District Judge in refusing to set aside the order failed to exercise a jurisdiction vested in him by law. It is conceded that there is no specific provision in the Act analogous to Order 9, Rule 9, Civil P.C. The Special Judge however restored the application under the inherent power vested in him under Section 151, Civil P.C. Learned Counsel for the applicant contends that the provisions of the Civil Procedure Code do not apply to the proceedings under the Act, and therefore the aid of Section 151 of the Code could not be invoked. A reference has been made to Sections 51 and 52 of the Act. Under the former, the Special Judge shall be deemed to be a public servant within the meaning of the Penal Code of 1860. Under the latter Section, the Special Judge has been vested with the powers conferred on a Civil Court by the Civil Procedure Code of 1908 for the purposes of compelling the attendance of witnesses and the production of documents and of awarding costs. It is argued that these two Sections are exhaustive, and the Special Judge has no further powers that are vested in the Civil Courts under the provisions of the Civil Procedure Code. Learned Counsel for the opposite party has referred to rules made under the United Provinces Encumbered Estates Act by the Local Government. Rule 6 provides that the proceedings under the Act shall be governed by the provisions of the Civil Procedure Code so far as they are applicable and not inconsistent with the provisions of the Act and of these rules.

3. The argument of learned Counsel for the applicant is that this Rule is limited in its operation to Section 14 of the Act under which the Special Judge is authorized to investigate the claims and determine the amount of debts. It is contended that this power should not be extended when the Special Judge is proceeding under the provisions of other Sections of the Act. It is true that in the marginal note a reference to Section 14; has been made, but the Rule itself is not restricted to that Section. The Special Judge reaches the stage of examination of claims after notices have been served on the parties concerned and written statements have been submitted by creditors, and the applicant. The matters arising out of the written statements filed by creditors, and debtors have to be investigated under Section 14. If the argument advanced by learned, counsel for the applicant is sound it would follow that the Civil Procedure Code would apply to one part of the

investigation and not to the other. The proceedings after the case have been referred to the Special Judge under Section 6 are intended to determine the claims of various creditors against the estate of the debtor, and it is impossible to separate one part of the investigation from another. In my judgment the scheme of the Act and the language of Rule 6 unmistakably lead to the conclusion that subject to certain limitations the Civil Procedure Code has been made applicable to the proceedings in the Court of the Special Judge. Irrespective of the view I take of the scope of Rule 6, in my judgment the Special Judge had inherent jurisdiction to restore the application which was dismissed by him for the default of the debtor.

4. In *Ganesh Prasad v. Bhagelu Ram* : AIR1925 All773 a Bench of this Court held that a Court could on good cause being shown restore an application for setting aside a dismissal for default or an ex parte decree, which application itself had been dismissed for default. It was further held that an application for restoration of a previous application dismissed for default did not fall directly under Order 9, but was entertainable under the inherent jurisdiction which the Court possesses under Section 151, Civil P.C. In *Harbans Singh v. Suresh Dutta* : AIR1929 All16 a similar view was taken of the inherent powers of Court where Order 9, Rule 9 did not apply. In *Firm Dwarka Das Baburam v. Vaish Flour Mill* : AIR1931 All594 a Bench held where an application under Order 21, Rule 9 is dismissed for default and an application for restoration is made, Order 9, Civil P.C., did not apply but the Court had inherent jurisdiction to restore an application if a good case is made out.

5. Learned Counsel for the applicant has argued that on the analogy of the above-mentioned rulings the Special Judge could not restore the application in the exercise of inherent jurisdiction because the Special Judge is not a Court. It cannot be disputed that the Special Judge is vested with judicial powers. His orders have the force of a decree and in certain circumstances he finally adjudicates between the parties appearing before him. In my opinion, it would be anomalous if a tribunal vested with judicial powers is not empowered to rectify his own mistakes or to restore an application that has been dismissed by himself for the default of a party provided the defaulting party has shown good cause. For the reasons given above in my opinion the Special Judge had jurisdiction to restore the application. Learned Counsel for the opposite party contends that no revision

lies from the order of the learned District Judge because under Section 45 of the Act the order of the Special Judge was appealable. In view of my decision on the first point it appears to me redundant to express any opinion on the second point as it does not arise. In the result I dismiss the application with costs.

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