Ashraf Vs. L. Saith Mal

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Court : Allahabad

Decided On : Sep-23-1937

Reported in : AIR1938All47; 173Ind.Cas.136

Appellant : Ashraf

Respondent : L. Saith Mal

Judgement :

Allsop, J.

1. This is an application in revision. The applicant put in an application under Section 4, United Provinces Encumbered Estates Act. A notice was issued to persons having claims in respect of debts to put in written statements of their claims within a certain period. The opposite party put in no claim within the period specified. Thereafter he made an application saying that he was delayed for certain private reasons, and was given a further period of two months, as allowed by Sub-section (3) of Section 8. He failed to present his written statement within that further period. The result was that the Special Judge held under Section 13 of the Act that the debt alleged to be due to the opposite party was deemed to have been duly discharged. There was an appeal against this finding and the order based upon it. It was held in appeal by the Additional District Judge of Moradabad that further time could have been allowed to the appellant and should have been allowed. The Additional District Judge set aside the order of the Special Judge and

sent the record back for disposal with a direction that the opposite party should be given a further chance to file his written statement. This application is that we should revise the order of the learned Additional District Judge and restore the order of the learned Special Judge.

2. A preliminary point is raised that we have no jurisdiction to interfere under the powers of revision given to us under Section 115, Civil P.C. It is urged that there are special provisions for appeal and revision-under Ch. 6, United Provinces Encumbered Estates Act. Section 45 lays down rules for appeals and Sub-section (5) of that section says: 'The decision on an appeal under this section shall be final.' Section 46 gives an Appellate Court power to intervene on its own motion, even if no appeal has been filed before it. Section 47 says:

Except as provided in Sections 45 and 46, no proceedings of the Collector or the Special Judge under this Act shall be questioned in any Court.

3. It is urged that the appellate judgment of the learned Additional District Judge of Moradabad is not open to revision because it was final under the provisions of Sub-section (5) of Section 45. The question for determination is whether the use of the term 'final' results in this that our powers of revision are not to be exercised. We have been referred to a decision of the learned; Judges of the Oudh Chief Court in Nihal Singh v. Ganesh Das Ram Gopal 0044/1936 , where it has been held tha6 a similar provision about finality in the Agriculturists' Belief Act implies that there shall be no interference in revision. On the other hand, we have been referred to a Full Bench decision of the Rangoon High Court in Mohammed Ibrahim Moola v. S.R. Jandass (1923) 10 A.I.R. Rang. 94, in which it was held that the word 'final' meanfi only that the decision to which it applied was not subject to appeal. The learned' Judges in that case held that there could be interference in revision. That decision has followed a decision of our own Courts in Balkaran Rai v. Gobind Nath Tiwari (1890) 12 All. 129. At pp. 155-156 in that case it is pointed out that the provisions' of Section 588, Civil P.C., which was in force at that time, laid down that orders passed in appeal under that section which referred to appeals from orders should be final not-withstanding the fact that there was obviously a power in the High Court to revise orders passed in appeal upon other

orders. It was evident that the word 'final' as used in that section could only mean 'not subject to appeal'. It could not be final in the sense that the power to interfere in revision was shut out. We consider that we should follow the ruling of our own Court and that of the Rangoon High Court based upon it. We consider that we have a right to interfere in revision under the provisions of Section 115, Civil P.C.

4. We now come to the question whether this is a fit case for interference on the assumption that we have jurisdiction to interfere. We are satisfied that the learned Additional District Judge was wrong in the decision to which he came. The Act is perfectly clear. It allows a claimant a, certain definite period within which to put forward his claim in a written statement. He has the period specified in the notice and in addition a further period of two months at the discretion of the Special Judge. Beyond that period of two months no further time can be allowed. As soon as the period of two months elapses, the claim is deemed to have been duly discharged. We consider that the learned Additional District Judge went against the provisions of the Encumbered Estates Act which are quite clear when he allowed an extension beyond the period of two months allowed by the Special Judge. The learned Judge has relied upon the proposition that the provisions of the Act must be read as supplementary to the provisions of the Civil Procedure Code. We see no force in this argument. The provisions of the Civil Procedure Code are applicable only in so far as they are consistent with the provisions of the Act itself. At the time when the period of two months expired, the applicant had acquired the right to be free from the claims put up by the opposite party. In these circumstances the order of the learned Additional District Judge cannot be allowed to stand. He acted beyond his jurisdiction in extending the time by means of his appellate order. We set aside that order and restore the order of the Special Judge. The opposite party will pay the costs of this application and also the costs in the Court of the Additional District Judge.