

trespasser. The District Judge can certainly direct Sri Kant to institute a suit for accounts against the applicant and in that suit the question as to how much is payable by the applicant may be determined. The applicant will then have a chance of taking his case before an appellate court. As things stand, we cannot scrutinize the evidence that was taken before the District Judge, because we are not sitting in appeal against his order.

We set aside the order of the learned District Judge as passed without jurisdiction.

1929

CHANDRIKA
RAI
v.
SRIKANT
RAI.

Before Mr. Justice Mukerji and Mr. Justice Niamat-ullah.

YUDHISHTIR LAL (DECREE-HOLDER) v. FATEH SINGH
AND ANOTHER (JUDGMENT-DEBTORS).*

1929

April, 23.

Civil Procedure Code, section 151—Application for setting aside auction sale—Dismissal for default—Restoration.

Under section 151 of the Civil Procedure Code a court has jurisdiction to restore an application for setting aside an auction sale, which was dismissed for default of appearance.

Dr. M. L. Agarwala, for the applicant.

Messrs. Peary Lal Banerji and Satish Chandra Das, for the opposite parties.

MUKERJI and NIAMAT-ULLAH, JJ.:—This is an application by one, who was the decree-holder in the court below, for setting aside an order dated the 8th of December, 1927, passed by the second Subordinate Judge of Saharanpur, in the exercise of our revisional power.

The facts are these. The decree-holder brought about the sale of the judgement-debtors' property. The judgement-debtors applied for the setting aside

* Civil Revision No. 269 of 1927.

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of the sale. The application came up for hearing on the 30th of June, 1927. On that date there was default in the appearance of the judgement-debtors, and their application was dismissed for default, the sale being confirmed automatically. Within a month of this date, namely, on the 26th of July, 1927, the judgement-debtors applied for the restoration of their application and for a re-hearing of it. The learned Subordinate Judge has granted this application by the order under revision.

The point that has been taken is that the learned Subordinate Judge had no jurisdiction to pass an order of restoration, although he professed to act under section 151 of the Civil Procedure Code. We have given the argument our best consideration, and we are of opinion that, whether section 141 of the Civil Procedure Code applies or not, section 151 may safely be applied. In this case the learned Subordinate Judge was satisfied that there was a very good ground for the default committed by the judgement-debtors. If that was so, it was necessary that the applicants should have their application for setting aside the sale re-heard. Justice was done in their favour, and we shall be loath to hold that the Code did not provide any remedy, when section 151 of the Code of Civil Procedure gives wide powers to the court to be exercised where there was no specific provision in it.

On the merits, the learned counsel for the applicant argued that the learned Judge did not consider the case fully and that he quoted the affidavit of only one of the applicants and did not consider whether there was any good ground for the other judgement-debtor to be absent. This is a matter relating to the facts of the case, and if the learned Subordinate