

I have studied the notifications. [The judgement then dealt with the question whether a certain Notification of Government, dated the 18th of May, 1877, was still in force, and decided it in the negative.]

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There is, therefore, no power left with the Superintendent of Police of Moradabad to deal with music in streets during festivals and ceremonies independently of the authority given to him under section 30 (iv) of the Police Act.

I accept the reference of the learned Sessions Judge, set aside the conviction and sentence, and order the fine, if any recovered, to be refunded.

 REVISIONAL CIVIL.

Before Mr. Justice Sulaiman.

KALI PRASAD (DEFENDANT) v. PARMESHWAR PRASAD
 (PLAINTIFF).*

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*Act No. IX of 1908 (Limitation Act), section 5, article 163
 —Civil Procedure Code, order IX, rule 4—Application
 for restoration—Extension of time—Jurisdiction.*

Section 5 of the Limitation Act does not apply to an application under order IX, rule 4, of the Civil Procedure Code for restoration of a suit dismissed for the plaintiff's failure to pay process fee, and the court has no jurisdiction to extend the 30 days' limitation fixed by article 163 of the Limitation Act for such an application.

THE facts of the case fully appear from the judgement of the Court.

Munshi Sri Narain Sahai, for the applicant.

The opposite party was not represented.

SULAIMAN, J. :—This is a defendant's application in revision from a decree of the Court of Small Causes.

* Civil Revision No. 222 of 1928.

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The suit had been adjourned on several occasions on account of the non-payment of process fee by the plaintiff. On the 7th of December, 1927, the court dismissed the suit for the plaintiff's default of the payment of the process fee. The expression used by the learned Judge was "thrown out for plaintiff's default." On the 13th of February, 1928, the plaintiff applied under order IX, rule 4, of the Code of Civil Procedure for the setting aside of the dismissal. The report of the office also indicated that the suit had been dismissed on account of the non-payment of the process fee. On the 24th of February, 1928, the suit was restored to its original number on the file and on that date the process fee was paid by the plaintiff. Although the language used by the Judge of Small Cause Court was not explicit, there is no doubt that the suit was dismissed on account of the non-payment of the process fee. The plaintiff himself treated the dismissal as such, because he applied under order IX, rule 4. The application for restitution of the case was filed more than 30 days after the date of the dismissal, and was beyond time under article 163 of the Limitation Act.

The only point that remains for consideration is whether the time could be extended by the court under section 5 of the Limitation Act. That section does not apply to all applications, but only to those that are expressly provided for therein. It applies to an application for a review of judgement or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force. The application in question was made under order IX, rule 4, and there is no express provision in that order which makes section 5 applicable to such applications, as for instance is to be found in order XXII, rule 9, sub-clause (3).

I must, therefore, hold that the court had no jurisdiction to extend the period of 30 days which had expired.

A somewhat similar view has been expressed by the Rangoon High Court in *Ma Naw Naw v. Somasundram Chetty* (1), with regard to applications under order IX, rule 13, of the Code of Civil Procedure which are governed by article 164.

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I accordingly allow this revision and setting aside the decree of the court below dismiss the plaintiff's suit with costs.

REVISIONAL CRIMINAL.

Before Mr. Justice Boys and Mr. Justice Banerji.

EMPEROR v. BHAGAT RAM.*

Criminal Procedure Code, section 133—Removing a trade or occupation—Borrow-pits dug for brick-making—Order to cease the brick-making, and also to fill up the existing pits—Legality of latter part of order.

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Where a Magistrate passed an order under section 133 of the Code of Criminal Procedure to stop a trade or occupation of brick-making which was going on in a particular locality, on the ground that it was injurious to the health or physical comfort of the community inasmuch as the borrow-pits made for the purpose of brick-making became breeding-grounds for mosquitoes, and also to fill up the existing pits and restore the *status quo*: Held, that the power "to remove" any trade or occupation, conferred by section 133, did not cover such an order to restore the *status quo* by filling up the existing pits.

THE facts of the case are fully stated in the judgment of the Court.

Babu *Piari Lal Banerji*, and Babu *Saila Nath Mukerji*, for the applicant.

The Assistant Government Advocate (*Dr. M. Waliullah*), for the Crown.

*Criminal Reference No. 367 of 1928.

(1) (1924) I.L.R., 2 Rangoon, 655.