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BRIJ KISHORE RAM SARUP v. SHEO CHARAN LAL

Allsop, J.

the profits arising from their business. Let us suppose that they enter into a contract with a third person *C* to carry on business as a larger separate firm, and C agrees that he will pay a certain portion of the profits from that business to *A* and *B* to be divided according to the terms of their original partnership. In a case of that kind the terms of the original partnership will be understood to have been included in the contract of further partnership which leads to the creation of a new firm. In the present case it was understood that the members of the partnership Brij Kishore Ram Sarup should recover a certain proportion of the profits from the business of the larger firm. I can see no reason why one of them cannot sue on behalf of all in accordance with the form of procedure laid down in order XXX of the Code of Civil Procedure, and, as I have already said, I agree with the order which my learned brother proposes to pass.

REVISIONAL CIVIL

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

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September 23

ASHRAF (APPLICANT) *v.* SAITH MAL (OPPOSITE PARTY)*

U. P. Encumbered Estates Act (Local Act XXV of 1934), sections 45(5) and 47—Appellate decision—"Final", meaning of—Revision lies—Civil Procedure Code, section 115—Power of revision—U. P. Encumbered Estates Act, sections 9(3), 13—Extension of time to file written statement—Jurisdiction.

Section 45(5) of the U. P. Encumbered Estates Act, which says that the decision on an appeal under that section shall be "final", means only that the decision is not subject to any further appeal; it does not mean that the decision is final in the sense that the power to interfere in revision under section 115 of the Civil Procedure Code is shut out.

Under section 9(3) of the U. P. Encumbered Estates Act an extension of time of not more than two months can be granted for the filing of a written statement by a claimant, and as soon as the period of two months elapses, the claim of the claimant who has failed to file his written statement is deemed

*Civil Revision No. 105 of 1937.

by section 13 to have been discharged. An order granting any further extension of time beyond two months is one passed without jurisdiction and can be set aside in revision.

Mr. *Jagnandan Lal,* for the applicant.

Mr. *S. N. Gupta,* for the opposite party.

NIAMAT-ULLAH and ALLSOP, JJ.:—This is an application in revision. The applicant put in an application under section 4 of the U. P. 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 9. 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. The present application is that we should revise the order of the learned Additional District Judge and restore the order of the learned Special Judge.

A preliminary point is raised that we have no jurisdiction to interfere under the powers of revision given to us under section 115 of the Code of Civil Procedure. It is urged that there are special provisions for appeal and revision under chapter VI of the U. P. Encumbered Estates Act. Section 45 lays down rules for appeals and sub-section (5) of that section says: "The decision

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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." 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 subsection (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 Dass Ram Gopal* (1), where it has been held that a similar provision about finality in the U. P. Agriculturists' Relief 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 *Mohamed Ebrahim Moolla* v. *Jandass* (2) in which it was held that the word "final" meant 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 Court in *Balkaran Rai* v. *Gobind Nath Tiwari* (3). At pages 155 to 156 in the report of that case it is pointed out that the provisions of section 588 of the Code of Civil Procedure 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 notwithstanding 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

(1) A.I.R. 1937 Oudh 124. (2) A.I.R. 1923 Ran. 94.
(3) (1890) I.L.R 12 All. 129.

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 of the Code of Civil Procedure.

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 Code of Civil Procedure 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.