

undoubtedly guilty of negligence, has been guilty of conduct which would be regarded as "disgraceful or dishonourable" by solicitors of good repute and competency.

Upon the whole matter we are satisfied that the Bar Council Tribunal's finding that Babu Prem Narain has been guilty of professional misconduct cannot be sustained.

In the result the rule is discharged.

APPELLATE CIVIL

Before Mr. Justice Rachhpal Singh

KISHNI (CREDITOR) *v.* MURLI SINGH AND OTHERS
(APPLICANTS)*

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U. P. Encumbered Estates Act (Local Act XXV of 1934), sections 9(3) (as amended); 13—Period within which written statement of claim can be filed—Appeal or revision filed from order rejecting written statement as being beyond time—Section 13 cannot come into play before decision of such appeal or revision.

Section 13 of the U. P. Encumbered Estates Act cannot come into play, in those cases in which an appeal or revision has been filed against the order of a Special Judge rejecting a written statement of claim as being beyond time, before the decision of such appeal or revision.

Where a written statement of claim was rejected as being filed beyond the period allowed by the provisions of section 9(3) of the U. P. Encumbered Estates Act as they formerly stood, and during the pendency of the appeal those provisions were amended, the case was sent back to the Special Judge to be dealt with in the light of the amended section 9(3).

Mr. *J. Swarup*, for the appellant.

Mr. *S. B. L. Gaur*, for the respondents.

RACHHPAL SINGH, J.:—The principal point for determination in these cases is as to whether the order of the court below holding that the claim was barred by limitation in view of the provisions of section 9, clause (3) of the Encumbered Estates Act was correct.

*First Appeal No. 298 of 1938, from an order of A. P. Ghildial, Special Judge, First Grade of Aligarh, dated the 16th of August, 1938.

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Section 9, clause (3) of the Encumbered Estates Act ordained as follows: "The written statement must be presented within the period specified in the notice, unless the claimant satisfies the special Judge that he had sufficient cause for not presenting it within such period, in which case the Special Judge may receive the statement if presented within a further period of two months." The effect of this clause was that the creditor of the landlord applicant had to file his written statement within a total period of five months and if that was not done the court had no power to give any further extension of time. It may in these circumstances be conceded that when the courts below held that the written statements in these cases were not filed within limitation that view was perfectly correct and the order of the courts below could not have been challenged in appeal or revision if there had not been any subsequent amendment of the law on the point. The law on the subject, however, has been changed by subsequent amendments and now as a result of those amendments section 9, clause (3) runs as follows: "The written statement must be presented within the period specified in the notice, unless the claimant satisfies the Special Judge that he had sufficient cause for not presenting it within such period, in which case the Special Judge may, subject to such orders as to costs as he may deem fit, receive such statement if presented at any time before the date on which he sends the decrees to the Collector under the provisions of section 19 or before the 30th day of November, 1939, whichever is later." It is now clear that it is open to the Special Judge before he sends up the decrees passed by him to the Collector under the provisions of section 19 to admit written statements though filed beyond the period of limitation for sufficient reason. In view of this amendment the ruling of a Bench of this Court in *Ashraf v. Saith Mal* (1) cannot go against the creditor.

(1) I.L.R. [1938] All. 110.

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It was argued before me that the provisions of section 13 would go against the creditor where the written statement of the claim by the creditor had not been made within a period which had been prescribed under section 9 before the amendment. Section 13 of the Encumbered Estates Act runs as follows: "Every claim decreed or undecreed against the landlord in respect of a private debt, other than a debt due to a co-operative society registered under the Co-operative Societies Act II of 1912 by its members, shall, unless made within the time and in the manner required by this Act, be deemed for all purposes and on all occasions to have been duly discharged." This section would be applicable to those cases only in which no appeal has been preferred. If a written statement has not been filed within the time prescribed and the court holds that it has been filed beyond the period of limitation and against that decision there is no appeal or revision to this Court, the provisions of section 13 might apply to that case. The creditor in that case might lose his remedy as ordained by section 13 of the Encumbered Estates Act. But the position will be wholly different in which an appeal or revision has been preferred. Section 13 cannot have any effect on such cases for the simple reason that the matter is still pending before the court and unless the decision of the appellate court is given it cannot be said that section 13 can come into play. The rights of the parties will be determined after the decision of the appellate or revisional court and not before. In an unreported case, *Mewa Ram v. Prithipal Singh* (1), ISMAIL J., held that by section 9 of the Amending Act sub-section (3) of section 9 had been amended and that the court was now authorised to receive the statement (statement of claim by the creditor) subject to such orders as to costs even if the statement was presented at a later date, provided good

(1) F. A. F. O. No. 97 of 1938, decided on 6th November, 1939.

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cause was shown and the statement was presented before the date on which the Special Judge sent the decrees to the Collector under the provisions of section 19 or before the 30th day of November, 1939, whichever was later. In another unreported case, *Ali Mohammad v. Zahurul Hasan* (1), the same learned Judge held that it was now (after the amendment) within the competence of the court to entertain a fresh claim if the claimant is able to satisfy the court that he was entitled to an indulgence. We have also another unreported case, *Sri Krishna Singh v. The Collector of Aligarh* (2). This case was decided on the 5th of January, 1940, by a Bench of two learned Judges of which I was a member. The view taken was that in view of the amendment made it was now within the competence of the court to extend time for good cause shown. The following observations might be quoted here: ". . . The position however has changed now since the U. P. Encumbered Estates Amendment Act of 1939 came into force. Sub-clause (3) of section 9 has been greatly altered and very wide powers have been given to the Special Judge to admit written statements presented at any time before the date on which he sends the decree to the Collector under the provisions of section 19 or before the 30th November, 1939, whichever is later . . . That being so the Special Judge has full authority to accept the written statement although it has been presented beyond the period of grace allowed by sub-clause (3). The claimant, however, will have to satisfy the Special Judge that he has sufficient cause for not presenting the written statement." After a consideration of the matter I feel satisfied that the correct view is that on account of the amendment made in the Encumbered Estates Act and in view of the provisions of section 9, clause (3) as they now stand it is open to the Special Judge, before whom the claimant made his claim by filing written statement

(1) F. A. No. 383 of 1939, decided on 8th November, 1939. (2) F. A. F. O. No. 184 of 1937, decided on 5th January, 1940.

beyond the period fixed, to extend that period for good cause shown. Section 13 of the Encumbered Estates Act does not apply to those cases in which an appeal or revision has been preferred against the decision of the court below. The provisions of section 13 will come into operation only after the termination of the appeal or revision as the case may be.

In the present case the written statement had already been filed by Mst. Kishni the creditor but was not filed within time. I think in view of what I have mentioned above it is necessary that the case should be sent back to the court below with directions that the appellant should be given an opportunity to show that she had sufficient cause for not presenting the written statement within the period prescribed. If she satisfies the court, she will be entitled to have her claim taken into consideration.

For the reasons given above I allow this appeal, set aside the order passed by the court below and send back the case to the trial court with directions that the appellant should be given an opportunity to show that she had sufficient reasons for not presenting her written statement of claim within the period prescribed. If she succeeds then the case should be disposed of according to law. So far as the costs in this Court are concerned they will abide the result.

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