

ment the phraseology of section 235 of the Indian Companies Act makes it tolerably clear that the proceedings contemplated in that section were intended to apply only to the director and not to his representatives. It may be a harsh section but I have to give effect to it as it stands. I see no reason whatsoever for not following the construction placed upon a similar section in England and therefore I hold that the proceedings brought by the Official Liquidators against Jugal Kishore in his life time cannot now be continued against his two sons and wife as heirs representing the deceased man's estate. Consequently this application fails and is dismissed with costs.

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MUFASSIL
BANK
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KISHORE

REVISIONAL CIVIL

Before Mr. Justice Ismail

RAM SWARUP (OPPOSITE PARTY) *v.* DEVI DAS (APPLICANT)*
U. P. Encumbered Estates Act (XXV of 1934), section 4—*Dis-
missal of application in default—Restoration—Jurisdiction
—Inherent power—Civil Procedure Code, section 151—
Applicability of Code to proceedings before Special Judge—
Rules by Government under the Act, rule 6—Special Judge
is a court.*

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Where an application under section 4 of the U. P. Encumbered Estates Act is dismissed by the Special Judge in default of appearance, the Special Judge has jurisdiction to restore it for sufficient cause.

The scheme of the Act and the language of rule 6 of the Rules made by the Government under the Act make it clear that subject to certain limitations the Civil Procedure Code has been made applicable to the proceedings before the Special Judge, who, being vested with judicial powers, is certainly a court. Although in the marginal note to rule 6 a reference to section 14 has been made, the language of the rule itself shows that the rule is not restricted in its operation to that section alone. Section 151 of the Civil Procedure Code therefore applies to all proceedings before the Special Judge, and he can act under that section in making the restoration. Irrespective of this view of the scope of rule 6, the Special Judge, as a tribunal vested with judicial powers, has inherent jurisdiction to restore

*Civil Revision No. 30 of 1938.

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the application which was dismissed by him for the default of the applicant.

Mr. *S. N. Seth*, for the applicant.

Mr. *Panna Lal*, for the opposite party.

ISMAL, J.:—This is an application in revision directed against an order of the court below. The facts of the case have been fully set out in the order of the learned District Judge and need not be recapitulated in detail. It appears that Devi Das, the opposite party, made an application to the Collector under section 4 of the Encumbered Estates Act. The application in due course was transferred to the Special Judge and a date was fixed for filing the written statement and depositing publication charges. The applicant on the date fixed failed to appear, with the result that the application was dismissed by the Special Judge. On the 8th July, 1937, the applicant made an application for the restoration of his application and the learned Special Judge considered that sufficient cause was made out, and therefore restored that application. On appeal the order of the Special Judge was affirmed by the learned District Judge. The creditor now comes to this Court in revision. It is argued that the order of the Special Judge was entirely without jurisdiction and the learned District Judge in refusing to set aside the order failed to exercise a jurisdiction vested in him by law. It is conceded that there is no specific provision in the Act analogous to order IX, rule 9 of the Code of Civil Procedure. The Special Judge, however, restored the application under the inherent power vested in him under section 151 of the Code of Civil Procedure. Learned counsel for the applicant contends that the provisions of the Code of Civil Procedure do not apply to the proceedings under the Act, and therefore the aid of section 151 of the Code could not be invoked. A reference has been made to sections 51 and 52 of the Act. Under the former the Special Judge shall be deemed to be a public servant within the meaning of the Indian Penal Code of 1860.

Under the latter section the Special Judge has been vested with the powers conferred on a civil court by the Code of Civil Procedure of 1908 for the purposes of compelling the attendance of witnesses and the production of documents and of awarding costs. It is argued that these two sections are exhaustive, and the Special Judge has no further powers that are vested in the civil courts under the provisions of the Civil Procedure Code. Learned counsel for the opposite party has referred to rules made under the U. P. Encumbered Estates Act by the Local Government. Rule 6 provides that the proceedings under the Act shall be governed by the provisions of the Code of Civil Procedure so far as they are applicable and not inconsistent with the provisions of the Act and of these rules. The argument of learned counsel for the applicant is that this rule is limited in its operation to section 14 of the Act under which the Special Judge is authorised to investigate the claims and determine the amount of debts. It is contended that this power should not be extended when the Special Judge is proceeding under the provisions of other sections of the Act. It is true that in the marginal note a reference to section 14 has been made, but the rule itself is not restricted to that section. The Special Judge reaches the stage of examination of claims after notices have been served on the parties concerned and written statements have been submitted by creditors and the applicant. The matters arising out of the written statements filed by creditors and debtors have to be investigated under section 14. If the argument advanced by learned counsel for the applicant is sound it would follow that the Civil Procedure Code would apply to one part of the investigation and not to the other. The proceedings after the case has been referred to the Special Judge under section 6 are intended to determine the claims of various creditors against the estate of the debtor, and it is impossible to separate one part of the investigation from another. In my judgment the scheme of the Act

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and the language of rule 6 unmistakably lead to the conclusion that subject to certain limitations the Civil Procedure Code has been made applicable to the proceedings in the court of the Special Judge. Irrespective of the view I take of the scope of rule 6, in my judgment the Special Judge had inherent jurisdiction to restore the application which was dismissed by him for the default of the debtor.

In *Ganesh Prasad v. Bhagelu Ram* (1) a Bench of this Court held that a court could on good cause being shown restore an application for setting aside a dismissal for default or an *ex parte* decree, which application itself had been dismissed for default. It was further held that an application for restoration of a previous application dismissed for default did not fall directly under order IX, but was entertainable under the inherent jurisdiction which the court possesses under section 151 of the Civil Procedure Code. In *Harbans Singh v. Suresh Datta Tewari* (2) a similar view was taken of the inherent powers of court where order IX, rule 9 did not apply. In *Firm Dwarka Das v. Vaish Flour Mill* (3) a Bench held that where an application under order XXI, rule 90 was dismissed for default and an application for restoration was made, order IX of the Civil Procedure Code did not apply but the court had inherent jurisdiction to restore an application if a good case was made out. Learned counsel for the applicant has argued that on the analogy of the above mentioned rulings the Special Judge could not restore the application in the exercise of inherent jurisdiction because the Special Judge is not a court. It cannot be disputed that the Special Judge is vested with judicial powers. His orders have the force of a decree and in certain circumstances he finally adjudicates between the parties appearing before him. In my opinion it would be anomalous if a tribunal vested with judicial powers is not empowered to rectify his own

(1) (1925) I.L.R. 47 All. 878.

(2) [1929] A.L.J. 1082.

(3) [1931] A.L.J. 622.

mistakes or to restore an application that has been dismissed by himself for the default of a party provided the defaulting party has shown good cause. For the reasons given above, in my opinion the Special Judge had jurisdiction to restore the application.

Learned counsel for the opposite party contends that no revision lies from the order of the learned District Judge because under section 45 of the Act the order of the Special Judge was appealable. In view of my decision on the first point it appears to me redundant to express any opinion on the second point as it does not arise. In the result I dismiss the application with costs.

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 APPELLATE CIVIL

*Before Mr. Justice Bennet, Acting Chief Justice, and
 Mr. Justice Verma*

LAKSHMI NARAIN (PLAINTIFF) v. MUHAMMAD AKBAR
 (DEFENDANT)*

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Letters Patent, section 10—"Judgment"—Order refusing to set aside the abatement of a second appeal—Order passed in second appellate jurisdiction and not original jurisdiction—Leave to appeal necessary where the order was passed by single Judge.

An order refusing to set aside the abatement of a second appeal does not amount to a "judgment" within the meaning of section 10 of the Letters Patent and therefore no appeal lies therefrom.

Further, if the order had amounted to a "judgment" then leave to appeal, obtained from the single Judge who passed the order, would have been necessary for an appeal to lie under section 10 of the Letters Patent, inasmuch as the order was passed in the exercise of second appeal jurisdiction and not of original jurisdiction. When a second appeal comes before a Judge of the High Court the jurisdiction which he exercises is a jurisdiction of second appeal and that jurisdiction covers all the orders which he may make in the matter and the course of that appeal.

Mr. B. Mukerji, for the appellant.

*Appeal No. Nil of 1938, under section 10 of the Letters Patent.