

## MISCELLANEOUS CIVIL

Before Mr. Justice A. H. de B. Hamilton and Mr. Justice  
Radha Krishna Srivastava

1939  
August, 4

KHWAJA SYED KAZIM HUSAIN (APPELLANT) v. Mst.  
MUBARAK JEHAN BEGAM (RESPONDENT)\*

*United Provinces Encumbered Estates Act (XXV of 1934), sections 8, 10, and 13—Limitation Act (IX of 1908), section 18—Deliberate omission of debt from debtor's written statement in Encumbered Estates Act proceedings—Creditor getting knowledge of proceedings under Encumbered Estates Act after expiry of time for filing his claim—Creditor if entitled to get extension of time under section 18, Limitation Act.*

Section 18 of the Limitation Act is applicable to proceedings under the Encumbered Estates Act.

Whenever a debt is proved to exist and the omission of it from the written statement of the debtor is not explained satisfactorily it would be a legitimate and fair presumption to draw that such omission was deliberate with an intention to reap the full advantage afforded by section 13 of the Encumbered Estates Act coming into play. The creditor, therefore, is entitled in such cases to extension of time under section 18, Limitation Act, for admission of his claim filed beyond time.

Messrs. *Hyder Husain, Naziruddin and H. H. Zaidi*, for the Appellant.

Messrs. *Ghulam Hasan and Iftikhar Husain*, for the Respondent.

HAMILTON and RADHA KRISHNA, JJ.:—This is an appeal under section 45 of the United Provinces Encumbered Estates Act against the order dated the 22nd May, 1937, passed by the learned Special Judge, first grade, of Hardoi, accepting the claim of the respondent as a creditor of the appellant under section 10 of the Act.

On the 10th September, 1935, the appellant Khwaja Syed Kazim Husain applied under section 4 of the

\*Miscellaneous Appeal No. 51 of 1937, against the order of Mr. Ab Hammad, Special Judge, 1st grade, of Hardoi, dated the 22nd May, 1937.

Encumbered Estates Act. The appellant did not mention any dower debt due to the respondent. The application was in due course transmitted to the Special Judge and the appellant submitted his written statement under section 8 on the 9th December, 1935. In this written statement also the dower debt due to the respondent was not mentioned with the result that when a notice under section 9 was published in the Gazette calling upon persons having claims in respect of their debts to file written statements of their claims, no notice as required by clause (2) of that section was sent to the respondent. The period of three months specified in the notice under section 9(1) for filing claims by creditors expired on the 22nd May, 1936, and the further period of two months mentioned in clause (3) of section 9 during which the Special Judge could entertain the claim on being satisfied that there was sufficient reason for not presenting the claim within the original period of three months also expired on the 22nd July, 1936. The respondent Musammat Mubarak Jahan Begam, on the 17th November, 1936, put in her claim as required by section 10 accompanied by an application praying for extension of time for admission of her claim on the ground that she was kept from the knowledge of the Encumbered Estates proceedings and her right to apply under section 10 by means of fraud committed by the appellant. A more complete statement of fraud alleged by the respondent was given later in her application dated the 9th December, 1936.

It may be mentioned at this stage that on the 26th August, 1936, the respondent had applied in the court of the Civil Judge of Shahjahanpur for leave to sue the appellant as a pauper for the enforcement of her dower debt. During the pendency of this application on the 7th November, 1936 the appellant appeared before the Civil Judge and represented that in view of section 7 of the Encumbered Estates Act no proceedings in respect of any debts could be instituted whereupon the same

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day the proceedings in that court instituted by the respondent were stayed, and this date (7th November, 1936) was alleged by the respondent as the date on which she came to know of the Encumbered Estates proceedings for the first time.

After several adjournments the learned Special Judge by his order dated the 22nd May, 1937, held that the omission by the appellant to mention the name of the respondent as a creditor was wilful with the intention to deprive the lady of putting forward her claim, and admitted the claim.

In the memorandum of appeal before this Court two points were taken (1) that section 18 of the Indian Limitation Act was not applicable to the proceedings under the Encumbered Estates Act, and (2) that there were no facts either alleged or proved which could bring the respondent's case under section 18 of the Indian Limitation Act.

The learned counsel for the appellant did not press the first point, and we think rightly, because in view of section 29(2) of the Indian Limitation Act there can be no doubt that section 18 will be applicable to proceedings under the Encumbered Estates Act.

On the second point the question is whether the conduct of the appellant in omitting to mention the name of the respondent as one of the creditors was fraudulent or not, i.e. whether the omission was deliberate with the intention of concealing the proceedings under the Encumbered Estates Act and her right to apply from the knowledge of the respondent. In the present case it is not denied that a very large amount was fixed as dower for the respondent—the exact amount is immaterial for the purpose of this case—and unless this debt was paid off or relinquished it was a subsisting debt. No evidence was adduced on behalf of the appellant to show that the respondent's claim was not a subsisting claim. The case was pending in the court below for a long time and there were

numerous adjournments. No attempt was made on behalf of the appellant to put in an objection or to summon any evidence. It was only at the time of the arguments that the case of oral relinquishment of it in the year 1933 was put through the counsel, which was characterised by the court as a flimsy one. No determination as to the subsistence or otherwise of this dower debt is involved in the present proceedings but we are of opinion that we can take notice of the nature of the explanation offered and the circumstances in which it has been offered for the purpose of determining whether or not the omission of the respondent's name was fraudulent.

On the other hand, there is no evidence that the respondent had knowledge or could have known of the proceedings in Hardoi. It is admitted that she had been living permanently at Shahjahanpur owing to differences with her husband since long before the institution of these proceedings. If she had known of these proceedings then there is no reason why she would not have filed her claim before the Special Judge instead of proceeding in the regular court at Shahjahanpur by an application for leave to sue as a pauper. On the facts as gathered from the present record we have to infer that the dower debt due to the respondent must have been within the knowledge of the appellant. The provisions of section 13 of the Encumbered Estates Act are very drastic and offer great temptation to a dishonest debtor to escape the payment of his just debts by the simple device of omitting to mention them in his application under section 4 and his written statement under section 8 of the United Provinces Encumbered Estates Act. The advantage resulting to the debtor by not filing a claim by the creditor within the time prescribed by section 9 is very great and we think that wherever a debt is proved to exist and the omission of it from the written statement of the debtor is not explained satisfactorily

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it would be a legitimate and fair presumption to draw that such omission was deliberate with an intention to reap the full advantage afforded by section 13 coming into play.

On a consideration of all the circumstances of the case we find no reason to differ from the finding arrived at by the learned Special Judge and dismiss the appeal with costs.

*Appeal dismissed.*

### REVISIONAL CIVIL

*Before Mr. Justice A. H. de B. Hamilton and Mr. Justice  
Radha Krishna Srivastava*

1939

August, 4

MOHAMMAD UMAR, THAKUR (DEFENDANT-APPELLANT)  
v. NASIRA, MUSAMMAT AND OTHERS (PLAINTIFFS-RESPONDENTS).\*

*Oudh Rent Act (XXII of 1886), sections 108(7) and (9), and sections 116 and 119—Suit under section 108(7) and (9)—Appeal whether lies to the Civil Court or the Revenue Court.*

Where a suit under the Oudh Rent Act is not *in toto* one in which an appeal would lie to the Civil Court but is partly under a section in which an appeal would lie to a Civil Court and partly under a section in which an appeal would lie to the Revenue Court, it is not for the Civil Court to hear the appeal, but the Revenue Court is entitled to hear it.

Where, therefore, a suit is filed in the Revenue Court under section 108, clause (7) and clause (9) the appeal against the order will lie to the Commissioner and not to the District Judge.

Mr. *Ramesh Narain Sinha*, for appellant.

Mr. *H. N. Das* for respondents.

HAMILTON and RADHA KRISHNA, JJ.:—This is a reference under section 124 A of the Oudh Rent Act made by the learned Commissioner of the Fyzabad Division enquiring whether he was empowered to hear an appeal.

\*Civil Reference No. 4 of 1938, made by A. G. Shirreff, Esq., Commissioner, Fyzabad.