

1939

MAHMUDUL
HAQ KHAN
v.
DEPUTY
COMMISSIONER,
GONDA,
AS THE
MANAGER,
COURT OF
WARDS,
UTRAULA.

revenue, the superior proprietor would be adversely affected, without having any say in the matter. Remissions do not constitute a permanent reduction in the assessment, and since it cannot be doubted that the *malikana* is based on the permanent assessment I do not consider that there would be any legal justification for a reduction in the *malikana* by the Court merely because remissions have been allowed by Government. As the law stands, in the absence of any legal provision on the point, or any other authority, I do not consider that the appellants' claim for a reduction can be allowed.

I agree therefore with the view taken by the lower appellate court and I dismiss this appeal with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL

*Before Mr. Justice Ziaul Hasan and Mr. Justice
J. R. W. Bennett*

1939
September,
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MUJIB-UR-RAHMAN KHAN, K. S. SARDAR (APPELLANT) v.
AHMAD MASIHULLAH (RESPONDENT)*

United Provinces Encumbered Estates Act (XXV of 1934), section 9(3)—Creditors' full address not given by applicant—Notice sent by address given not served on creditor—Claim of creditor filed after expiry of period prescribed under section 9(3), whether can be entertained.

The provisions of sub-section (3) of section 9 of Act (XXV of 1934) do not come into operation unless the applicant has given sufficient particulars (provided that they can be ascertained) to enable the notice to be served by registered post on the creditor.

Where, therefore, the full address of a creditor was not given as required by section 8(1)(d) of the Act, and consequently the copy of the notice sent to him by registered post was not delivered to him and there was nothing to show either that the full address was not known to the applicant or that, if it was not known to him, he could not have ascertained it, the Court is justified in allowing the creditor to file his written statement

*Miscellaneous Appeal No. 17 of 1938, against the order of Mahabir Prasad Varma, Esq., Special Judge, 1st Grade, Kheri, dated the 5th January, 1938.

of claim after the period provided in sub-section (3), of section 9. *Ashraf v. Saith Mal* (1), and *Kazim Husain, Khwaja, Syed v. Mubarak Jahan Begam* (2), referred to.

Mr. *Mohammad Husain*, for the appellant.

Mr. *Abrar Husain*, for the respondent.

ZIAUL HASAN and BENNETT, JJ.:—This is a miscellaneous appeal under section 45 of the United Provinces Encumbered Estates Act against the order, dated the 5th January, 1938, passed by the Special Judge, first grade, Kheri, allowing a claim by a creditor to be admitted, though filed after the period allowed by sub-section (3) of section 9.

Notice was published in the *Gazette* under section 9 of the Act on the 4th January, 1936, and under section 11 on the 23rd January, 1937. A written statement was filed by the respondent on the 22nd July, 1937. The Special Judge admitted this written statement, though filed beyond the period provided in sub-section (3), because the full address of the respondent, had not been given under section 8(1) (d) of the Act, and consequently the copy of the notice sent to him by registered post had not been delivered to him. The Special Judge was of opinion that as the applicant had not complied with all the requirements of the law he must be held responsible for the non-service of the notice on the creditor.

It is admitted that though a copy of the notice was sent by registered post to the respondent's address as given by the applicant, it was not delivered to him, and it is also admitted that only the name of the mohalla, Banarsi Bagh, was given, and not also the number of the house. It would appear that the letter was not delivered because the address given was insufficient.

The respondent is a minor, aged 10 years old, and was living with his mother, who was representing him in the case as his guardian. He and his mother are said to have come to Banarsi Bagh, Lucknow from Lakhimpur about a year before.

(1) (1938) A.I.R., All., 47.

(2) (1939) I.L.R., 14 Luck., 694.

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MUJIB-UR-
RAHMAN
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MUJIB-UR-
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v.
AHMAD
MAHMOOD

We have been referred to certain rulings bearing on sub-section (3) of section 9 of the Act, but they are not very relevant. In *Ashraf v. Saith Mal*, (1) the Allahabad High Court held that no further period can be allowed than that provided in sub-section (3) of section 9 of the Act, but in this case it appears that the applicant had furnished all necessary information.

Ziaul Hasan
and
Bennett, JJ.

In *Kazim Husain, Khawaja, Syed v. Mubarak Jahan Begam* (2), this Court held that the deliberate omission of a debt from the debtor's written statement would justify an extension of the time allowed to the creditor concerned under sub-section (3). The present case is not on all fours with this case. It is not suggested that there was any deliberate omission in the applicant's written statement. But there was certainly negligence on his part if, either knowing the creditor's full address or being able to ascertain it, he omitted to give it. There is nothing to show either that the full address was not known to the applicant or that, if it was not known to him, he could not have ascertained it. Presumably as he knew that the respondent lived in this mohalla, it would not have been difficult for him to ascertain the number of the house where he resided.

We are unable to find therefore that the appellant complied with the requirements of the law, and we do not consider that the provisions of sub-section (3) of section 9 come into operation unless the applicant has given sufficient particulars (provided that they can be ascertained) to enable the notice to be served by registered post on the creditor. We are of opinion that the lower court was justified on this ground in allowing the respondent to file his written statement after the period provided in sub-section (3), and we dismiss this appeal with costs.

Appeal dismissed.

(1) (1938) A.I.R., All., 47.

(2) (1939) I.L.R., 14 Luck., 694.