Pandey Parshotam Prasad vs Balram Prasad Misra on 17 July, 1953

Equivalent citations: AIR1954ALL1, AIR 1954 ALLAHABAD 1

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This appeal has been filed on behalf of a creditor whose claim under Section 9, U. P. Encumbered Estates Act (No. 35 of 1934) was rejected on the ground that it was time-barred. The landlord-applicants filed an application under Section 4, U. P. Encumbered Estates Act, before the Collector which, in due course, was sent to the learned Special Judge, second grade, Basti. The landlord applicants then filed an application under Section 8. U. P. Encumbered Estates Act, before the learned Special Judge and on 12-6-1937, notices were published in the U. P-Gazette in accordance with the provisions of the Act and the creditors were required to put in their claims within three months from the date of the notification. According to Section 9. before its amendment in 1939, the Special Judge could on sufficient cause being shown grant only two months extension and no more. The last date for the creditors putting in their claims could not thus be extended beyond 12-11-1937.

The claim was, however, filed on 18-1-1938, after the period of limitation had expired and the reason given for the delay in filing the claim was that the creditor's father had been murdered on 20-11-1936, and he was involved in the prosecution of the culprits following the murder who were convicted on 22-9-1937, and the creditor did not know of the Encumbered Estates proceedings and was not able to put in his claim before 18-1-1938. The law, as it stood then, did not give any option in the matter if the period fixed under Section 9 had expired and this application was rejected on the 17-11-1938. Against the order dismissing the application under Section 9 an appeal was filed in the court of the District Judge on 20-12-1938.

This appeal was admitted and numbered as Encumbered Estates Appeal No. 50 of 1938 and notices were issued to the respondents. While the notices were being served on the respondents, the Chief Inspector of Stamps made a report on 11-9-1939, that the memorandum of appeal was not sufficiently stamped. This report was brought to the notice of the learned counsel for the appellant and on 25-9-1939, he filed an objection to the report and contested it. The learned Judge on 25-1-1940, directed that a copy of this objection may be sent to the revenue authorities concerned

and they may be asked to file a reply by 24-2-1940.

2. It may be mentioned that by reason of the great hardship that had been caused by the restriction put on the power of the Special Judge to extend the period only for a maximum limit of two months and no more and no option being given to the court to extend that period even for good cause, the legislature amended Section 9 by the Amendment Act No. 11 of 1939, which came into force on 30-9-1939. After the amendment the creditor made an application on 28-11-1939, that, his claim be reconsidered. On 24-2-1940, on the date fixed when the appeal was put up again before the learned District Judge, the learned counsel for the appellant stated that he did not wish to proceed with the appeal and the learned Judge noted that the deficiency in the court-fee had not been paid and the appellant did not wish to proceed with the appeal and "the appeal be struck off."

The application filed on 28-11-1939, was to the effect that by reason of the amendment to Section 9, U. P. Encumbered Estates Act the claim filed on 18-1-1938, may be considered as within time and it may be admitted and the case decided on the merits. This application was dismissed on the 22nd of January, 1942, and the learned Special Judge relied on a decision of a learned single Judge of this Court in -- 'Mt. Kishni v. Murli Singh', AIR 1940 All 344 (A). There was an appeal filed against that order and that appeal was dismissed by the learned District Judge on 21-4-1942. This second appeal is against that order.

3. Learned counsel for the appellant has urged that the amendment must be deemed to apply to all debts due from landlord-applicants, Whether they had Already become time-barred or not, and after the amendment he was entitled to have his application dated 18-1-1938, reconsidered.

4. Section 9(3) of the Encumbered Estates Act before its amendment read as follows:

> "The written statement must be presented within the period specified in the notice, unless the claimant satisfies tha 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 original section, therefore, made it clear that beyond a period of two months the Special Judge had no jurisdiction to extend the period of limitation for filing a claim by a creditor. This worked great hardship on the creditors as in a large number of cases the creditors never came to know of the fact that the debtor landlord had applied under the Encumbered Estates Act and that notification had been issued fixing a period within which the creditors were to put in their claims.

To take away the rigour of this provision, this Court held in -- 'Chunni Lal v. Chandan Gopal', AIR 1939 All 542 (B) that, if the landlord applicant had not mentioned in the list of creditors given by him the name of a particular creditor, the creditor could claim the benefit of Section 18, Limitation Act, and put in his claim even beyond the period of two months given under Section 9, U. P. Encumbered Estates Act. That decision also could apply only to cases where the landlord applicant had not included in the list of debts the debt due and the creditor had not put in his claim within time. It could not help a creditor whose name was given in the list even if he could make out

sufficient cause for his not having been able to file his claim within the period fixed.

The legislature, therefore, stepped in and bv the U. P. Encumbered Estates Act (No. 11 of 1939) amended Section 9 by deleting the words "receive the statement if presented within a further period of two months" and substituting therefor the words "subject to such orders as to cost 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 30-11-1939, whichever is later."

5. There is no section in the Amending Act making this provision retrospective and the question, thererofe that arises is whether this amendment can be deemed to apply even to claims which had become time-barred. In considering this question, we must bear in mind that the U. P. Encumbered Estates Act provided that a(sic) applications under Section 4 of the Act had to be-filed within one year after the date when Chap-ter 3 of the Act came into force. This chapter came into force on 30-4-1935. All application by landlords who were indebted had, therefor to be filed by 30-4-1936, which was the last date for such applications. The landlord-applicants who wanted to apply under Section 4 had, there fore, all filed their applications by 30-4-193 Section 6 of the Act required the Collector forward these applications.

The Collectors forwarded these application without delay and in most cases on the sam date on which they were received. After the application was received by the Special Judge the landlord applicant had to file his writte statement under Section 8 and notice of the applica-tion along with list of properties and debts men-tioned by the landlord applicant was published in the gazette giving the creditors 3 months' time to file their claims under Section 9. In the large majority of cases, therefore, the period for putting in claims by the creditors under Section 9 of the Encumbered Estates Act had elapsed before the Amending Act was passed. So far as we know, there were hardly any cases in which on 30-9-1939, when the Amendment Act came into force, the period for putting in claims by the creditors under Section 9 of the Encumbered Estates Act had not already expired.

If, therefore, the Amendment Act is to be made applicable only to claims that were stir within time the amendment would become un necessary and practically useless, as it woul not be of any help to the large number o creditors whose claims had become time-barre and for whose benefit alone this statement was made. In such circumstances, we think that is may be understood by necessary implication that the legislature had intended that the Amendment would apply to all debts whether within time or not.

6. Learned counsel has relied on the decision in --'Dila Ram v. Atma Ram', AIR 1949 All 225 (FB) (C) to which one of us was a party. It was held in that case that unless the statute .

so provides, either expressly or by necessary implication, the section will not be deemed tc have retrospective effect. Here, there can be no doubt that the amendment was intended to ap ply to all debts and not only to debts which were within, time as otherwise the amendment would be useless and it will be of no help to the creditors for whose benefit it was intended. "

The same view was taken by a bench of the, Patna High Court in -- 'Sm. Sant Kuer v.

Ganesh Choudhary', AIR 1949 Pat 137 (D). The learned Judges held that no statute should be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. In our view, this amendment must be deemed to have been intended to apply to all claims by creditors whether they had already been put in before the date of the amendment or thereafter.

7. It is urged by teamed counsel for the resnondent that the last date for putting in the claim being 12-11-1937 and the claim not having sen put in on that date the debt was discharg-

under Section 13, U. P. Encumbered Estates Act, d, on the date when the section was amend-

I, there was no claim outstanding. Section of the Act reads as follows:

'Every claim decreed or undecreed against the andlord in respect of a private debt, other (sic) a debt due to a co-operative society registered under the Co-operative Societies Act, 1912, by its members shall, unless made within the time and in the manner required by this Act, be deemed for all purposes and (sic) all occasions to have been duly discharged."

(sic) however, the amendment is interpreted supply not only to claims which were still with-

(sic)rtimo but also to claims that had become (sic)barred Section 13 will present no difficulty inas-such as it would have to be held that the claim was presented within time and in the manner required by Section 9.

8. The next question that has been raised is be effect of the previous proceedings pending of the time when the amendment was made. The claim was rejected on 17-11-1938, by the learned Special Judge, second grade. An appeal was filed against that order in the court of the District Judge which was numbered and registered as Encumbered Estates Appeal No. 50 of 1938. While that appeal was still pending the amendment came into force and, if the decision given by the learned single Judge in -- 'Mt. Kishni's case (A)', cited above, is followed, the amendment would apply and tho claim would Lave to be considered in accordance (sic) the amendment. On 28-11-1939, (sic) the appeal was pending, the editor filed an application that his application (sic) 18-1-1938, be reconsidered and admitted (sic) having been filed within time. In view of that application, the appeal was not pressed and on 24-2-1940, the learned District Judge passed an order striking it off.

9. The point) urged by learned counsel for the respondent is that appeal having been dismissed the order of Special Judge dated 17-11-1938, was merged in the order of the learned District Judge dated 24-2-1940, and the matter could not be reconsidered by the Special Judge. When an appeal filed in a court against an order passed by the lower court is dismissed so that (sic) decree of the trial court is merged in the decree of the court of appeal the trial court has no jurisdiction to review its previous order and to reconsider the matter. In this case, however, there is one important circumstance that the Chifif Inspector of Stamps had reported that the court-fee on the memorandum of appeal was Insufficient. The matter was still pending, and it had not been decided either one way or the other.

On 24-2-1940, when that report was put up before the learned Additional District Judge and learned counsel stated that he did not wish to proceed with the appeal, presumably as he had already applied to the Special Judge for a reconsideration of the matter, the learned Judge passed the following order.

The Vakil for the appellant has stated that he does not want to prosecute the appeal and has not naid the deficiency. The appeal is struck off."

She learned Judge must have used the words struck off" as he did not wish his order to be considered as an order dismissing a regular appeal and intended that it should be taken as a mere rejection of the memorandum of appeal. The learned Judge has in his order said "has not paid the deficiency". He must have, therefore, held that the report of the Chief Inspector of Stamps that the memorandum of appeal was insufficiently stamped was correct, though learned counsel could not trace out any order to that effect.

In such circumstances, it cannot be said that the learned Judge intended to pass a decree affirming the decree passed by the trial court and thus deprive the trial court of jurisdiction to review its previous order in the light of the amendment. The fact that the appellant had made an application for review of the previous order and re-consideration of his claim filed on 18-1-1938, must have been brought to the notice of the learned Judge and it may be that it was for that reason that he passed the order that the. appeal be "struck off". We cannot therefore, say that, the order passed by the learned District Judge affirmed the order passed by the trial court and had deprived the trial court of jurisdiction to review the order which was clearly wrong in the light of the amendment of the section.

10. The result, therefore, is that this appeal must be allowed and the order of the lower court be set aside. The Special Judge is directed to proceed with the claim filed on 18-1-1938. and pass orders in accordance with law on the basis that it was filed within time. As the case has now become very old the lower court will act expeditiously. In view of the special circumstances of this case we do not propose to pass any order as to costs.