

(1951) 12 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 6 of 1951

Dhumun

APPELLANT

Vs

Ram Dayal

RESPONDENT

Date of Decision : 11-12-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, Order 9 Rule 13, 104(2), 115
Limitation Act, 1908 — Section 3

Citation : AIR 1952 HP 63

Hon'ble Judges : Chowdhry, J.C.

Bench : Single Bench

Advocate : Ved Vyas, for the Appellant; Pritam Singh, for the Respondent

Final Decision : Allowed

Judgement

Chowdhry, J.C.

1. This is a defendant's application in revision against the order of the learned Subordinate Judge of Chamba dated 4-4-1950 under Order 9, Rule 13, C. P. Code, rejecting his application to set aside the ex parte decree that had been passed against him on 8-7-1948 in favour of the plaintiff-respondent in a preemption suit.

2. The learned counsel for the plaintiff-respondent took two preliminary objections. The first was that the present revision, which was filed on 15-1-1951, was time barred under the ninety-day rule of limitation laid down by this Court in "BEG RAM v. CHARAN DAS" AIR 1951 Hi. P. 16. That ruling was however published in the January 1951 issue of the A. I. Rule and therefore published too late for the defendant-petitioner being penalised for not having followed it. Nor would it be justifiable to reject the application on the ground of laches because after the rejection of his application under Order 9, Rule 13, the petitioner filed within limitation an application for review of that order which was dismissed for default on 28-11-1950, and, on 15-1-1951, the present application was filed in

this Court.

In view of the fact that there existed no rule of limitation for the filing of revision petitions in Himachal Pradesh prior to the said decision of this Court published in the January 1951 issue of the A. I. R., I would hold that the delay in the filing of the present revision petition has been sufficiently explained by the fact that the petitioner's application for review was pending from 3-7-1950 to 28-11-1950. That pendency of other remedy had recourse to by the petitioner may be taken as sufficient explanation of delay finds support from a ruling of the late Oudh Chief Court reported as "JAGANNATH v. BIKARMAJIT SINGH" AIR 1929 Oudh 383. The first preliminary objection has therefore no force.

3. The other objection taken by the learned counsel for the plaintiff-respondent was that as the order dated 4-4-1950 against which the present revision has been filed was open to appeal but no appeal had been filed against it, the revision is incompetent under paragraph 35 of the Himachal Pradesh (Courts) Order, 1948, which, so far as this objection is concerned, is "mutatis mutandis" the same as Section 115, C. P. Code. In support of this objection the learned counsel cited two rulings: Thavasikannu Thevar and Others Vs. S. Sankaralingam Pillai, and A.H. Ghaznavi and Another Vs. Sardar Gurcharan Singh

It is however clear from the Allahabad ruling cited by the learned counsel for the plaintiff-respondent himself that revision would be barred only where a first or a second appeal lay to the High Court. In other words, the word "thereto" in Section 115 refers to the High Court. Maharani Nilimaprova Vs. Kadambini Dasi, . In the present case, while an appeal against the order in question did no doubt lie to the District Judge under Order 43, Rule 1 (d), C. P. Code, a second appeal to this Court would have been barred u/s 104 (2) of the Civil Procedure Code. The second objection with regard to the incompetency of the present revision has also therefore no force.

4. Coming to the merits of the revision, the only ground on which the petitioner's application under Order 9, Rule 13 was dismissed by the Subordinate Judge was that it was time barred. The order of the Subordinate Judge is quite silent as to the law of Limitation which he purported to apply. As stated above, the ex parte decree had been passed on 8-7-1948, the application under Order 9, Rule 13 was filed on 22-9-1948 and it was dismissed as time barred on 4-4-1950. The Indian Limitation Act was however enforced for the first time in Himachal Pradesh on 23-3-1949 by the Government of India Ministry of States' Notification No. 66-IB of that date. That being so, the Indian Limitation Act was not applicable in the present case.

A reference to the order of His Highness the Raja of Chamba dated 28 Chet 1981 shows that the period of limitation for such applications for Chamba Wazarat was curtailed from three months to thirty days. The Darbies in the present case however did not belong to Chamba Wazarat but to Churah Wazarat, That being so, the three-month rule of limitation continued to apply to them, and therefore

the petitioner's application under Order 9, Rule 13 was not time barred. The learned Subordinate Judge therefore failed to exercise jurisdiction that vested in him on account of erroneous decision on the point of limitation, and therefore this Court can interfere in revision AIR 1949 239 (Privy Council)

5. The revision is allowed with costs, the judgment and order of the Subordinate Judge dated 4-4-1950 are set aside, and the case is remanded to that Court under Order 41, Rule 23, Civil P. C., for disposing of the defendant-petitioner's application under Order 9, Rule 13, Civil P. C., according to the law. The parties are directed to appear in the Court of the Subordinate Judge on 11-1-1952.