

(1949) 03 AHC CK 0002
In the Allahabad High Court

Rashid Ahmed

APPELLANT

Vs

Sahu Bisheshwar Dayal

RESPONDENT

Date of Decision : 29-03-1949

Acts Referred:

Citation : AIR 1949 All 554

Hon'ble Judges : Seth, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Seth, J.—This is an unfortunate case," but it appears that the appellant himself is greatly responsible for his misfortune.

2. The appellant applied u/s 20, U.P. Encumbered Estates Act praying that the proceedings be quashed. The Special Judge allowed the application on 14th December 1946 in the following words:

The application is allowed. The proceedings u/s 20, Encumbered Estates Act will stand-quashed subject to payment of taxable costs of the opposite parties by the applicant within a month from today. The office will mention the costs in the formal order to be prepared in connection with this order. If the costs are not paid within the aforesaid time, the application will stand dismissed with costs to opposite parties.

This order did not comply strictly with the requirements of Section 20, U.P. Encumbered Estates Act which gives powers to the Special Judge to pass such order as to costs of the proceedings as he thinks proper and provides that the order for quashing proceedings shall not take effect unless the landlord, within one month of such order pays into Court the amount of any costs ordered by the, Special Judge under this section. The order for payment of costs within a specified time can be carried out only if the precise amount of costs is specified in the order. Section 20 should, therefore, be interpreted to mean that if the Special Judge thinks it proper to make (any order for the payment of costs, he

should in that order specify the exact amount of costs that are required to be paid. He may not be able to do so immediately when the application is presented or when he makes up his mind to allow the application and certain calculations may have to be made by the office before the exact amount of costs is ascertained. The Special Judge may, however, postpone the making of the order unless the costs have been ascertained and calculated by his office. The order of the Court below to the effect that the office will mention the costs in the formal order was, therefore, not a suitable order as contemplated by Section 20 of the Act. The office may take a very long time, as it did in the present case, in preparing a formal order; it may in a certain case take even more than a month. In any view of the matter, if the order such as the one dated 14th December 1946, is to be deemed a proper order, the applicant will generally not get thirty clear days, howsoever quickly the office may proceed to ascertain the amount of costs. It will take at least a day or two.

3. In this case the formal order was prepared on 2nd January 1947, and on that date the amount of costs which the appellant was required to pay had become ascertained. The appellant, however, did not pay these costs even within thirty days of 2nd January 1947. He has not yet paid the costs shown in the formal order. He chose to make an application for the extension of time which was dismissed on 31st January 1947. The present appeal is directed against this order dated 31st January 1947.

4. I do not find any good grounds for holding that the order dated 31st January 1947, is a wrong order. The statute itself limits the period (for the deposit of costs to thirty days from the date when the order is made. It does not confer any jurisdiction upon the Special Judge to extend the period limited by the statute. The learned Special Judge was, therefore, bound to dismiss the application for the extension of time.

5. If the applicant had deposited the costs within thirty days of 2nd January 1947, it would have been possible for me to grant some relief to the appellant. I would have held that the order dated 14th December 1946, was an incomplete order and became a complete order within the meaning of Section 20 of the Act on 2nd January 1947, when the amount of costs was ascertained. In that view it would have been possible to hold that the order for the payment of costs was made on 2nd January 1947. As I have already stated, the appellant himself is responsible for the unfortunate position in which he finds himself. He did not make the deposit within thirty days of 2nd January 1947, and I have no jurisdiction to allow him any extension of time for the same reason that the Court below had no jurisdiction to grant him any extension. The appellant has chosen to appeal against a wrong order. If he had appealed against the order dated 14th December 1946, it might have been possible for me to afford him some relief by setting aside that order on the ground that it was not a proper order as contemplated by Section 20, Encumbered Estates Act. Having not made the deposit within thirty days of 2nd January 1947, and having not appealed

against the order dated 14th December 1946, the appellant has, by his own acts deprived himself of any relief that he could have obtained from this Court.

6. As already indicated above, the order appealed against is perfectly correct. There is, therefore, no force in this appeal and it is dismissed. Under the circumstances of the case, however, there shall be no order as to costs of this appeal.