

(1955) 11 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 113-D of 1985

S. Dhillu Singh

APPELLANT

Vs

S. Sohan Singh and Another

RESPONDENT

Date of Decision : 18-11-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Displaced Persons (Debts Adjustment) Act, 1951 — Section 10, 11(2), 5

Citation : AIR 1956 P&H 253

Hon'ble Judges : Kapur, J

Bench : Single Bench

Advocate : R.S. Narula, for the Appellant; Anup Singh, for the Respondent

Final Decision : Dismissed

Judgement

Kapur, J.—This is a rule obtained against an order made by Shri Bhatnagar acting as a Tribunal, Delhi, dated 10-12-1954 setting aside the order of dismissal in default of an application made u/s 10 by Sohan Singh dated 10-11-1953 under the provisions of Section 151, Civil P. C.

2. On 15-3-1953 Sohan Singh made an application u/s 10, Displaced Persona (Debts Adjust-merit) Act, LXX of 1951 and the debt mentioned therein was dated 12-5-1947 which it was alleged was due from Dhillu Singh and Saran Singh. On 16-2-1953 Dhillu Singh made an application under 5 of that Act as is required by Section 11(2) of the Act.

3. These two matters were pending in the Court of Mr. Hans Raj who on 10-11-1953 ordered the par-ties to the two applications to appear before Mr. Bhatnagar on that very day as they had been transferred to that Tribunal. As Sohan Singh did not appear before Mr. Bhatnagar the application u/s 10 was ordered to be dismissed at 4-45 p.m. and the case u/s 5 was adjourned for service. In the proceedings u/s 5 Mr. Sardara Singh appeared for Sohan Singh on 17-12-1953 before Mr. Bhatnagar.

4. On 19-1-1954 Sohan Singh applied for restoration of his application u/s 151, Civil P. C., and Section 25, Debts Adjustment Act. The reasons given for non-appearance were that both the cases were sent from the Court of Mr. Hans Raj and there was no list of causes showing Sohan Singh's case outside the Court of Mr. Bhatnagar and on enquiring about Section 5 application the petitioner came to know that it had been adjourned to the 17th December on which date he appeared and the case was adjourned to 23-2-1954 and that when he examined the file the applicant came to know that the petition under 10 had been dismissed in default.

5. Dhillu Singh objected to the restoration on the ground that the application was barred by time and that there was no sufficient cause under Order 9, Rule 9 for its restoration and also that there was no ground for review nor did the matter fall u/s 151, Civil P. C. The learned Judge, however, treated the matter as a mistake of the Court and held that there was no bar for exercising his powers u/s 151 and restored the case on 10-12-1954.

6. The petitioner laid stress on the point that as there is a specific provision in the CPC Order 9 Rule 9 He has relied on several cases of the Lahore High Court and other High Courts. In all of these cases the ratio decidendi was that the inherent powers of the Court cannot be invoked where the application for restoration is barred by time.

These cases are *Firm Duni Chand-Gokal Chand v. Pritam Das and others* AIR 1925 Lah 321 (2) (A), *Jai Kishan Dass v. Chiragh Din* AIR 1935 Lah 60 (B), *Karam Bhari v. Jagan Nath* AIR 1936 Lah 495 (C), *Debendra Nath Dutt Vs. Sm. Satyabala Dasi and Others*, *Chinnappa Naidu v. B. K. Dcenadayalu Naidu* AIR 1948 Mud 480 (E) and *U Aung Gyl v. Government of Burma* AIR 1940 Rang 162 (FB) (F).

These cases are, in my opinion, not applicable to the facts of the present case. The nature of the proceedings under the Debts Adjustment Acts are of a different kind altogether. The preamble shows that the object of the Act is the adjustment of debts by displaced persons and the recovery of certain debts due to them.

7. The scheme of the Act shows that if a debtor wants to make an application for the settlement of his debts he must do so u/s 5 of the Act within one year of the coming into force of the Act. Then the section prescribes the particulars which are to be given by the debtor making the application.

Section 10 deals with the claims by creditors against displaced debtors and it does not prescribe any limit of time within which these applications can be made. The procedure in such applications is that (sic) Tribunal has to cause notice to be served on displaced debtors and then a displaced debtor can make an application u/s 5 and the Tribunal is to proceed as if the proceedings commenced with an application by a displaced debtor u/s 5 and all the other provisions of the Act become applicable.

But if no such application is made, the claim of the creditor is to be adjudicated upon and therefore when an application is made u/s 5, the Tribunal has to proceed further in that application treating the matter as if the whole tiling had commenced with an application u/s 5.

In other words, the application u/s 10 re-mains in abeyance and when the matter u/s 5 is decided naturally the debt claimed u/s 10, if found to be due, becomes adjusted u/s 5 and therefore when the application on 15-2-1953 was made by Dhillu Singh u/s 5 that became the principal proceedings and Section 10 proceedings became merely a subsidiary proceedings to be decided either when the matter u/s 5 is decided or if no such application was made then independently. As I have said in the present case the application u/s 5 had been made and therefore there was nothing to be done u/s 10 until the matter u/s 5 was decided.

8. Mr. Hans Raj, acting as the Tribunal, on 6-8-1953 made an order giving effect to the provisions of the Debts Adjustment Act in the following words:

An application by respondent 1 u/s 5 of the Displaced Persons (Debts Adjustment) Act has been filed. To come up along with that application."

Thus it was clear to Mr. Hans Raj as to what was to be done. I find that there is a note in the index of this case to the following effect--

"Ainda digar misel pesh hoti rahe"

9. As a matter of fact the application made by Dhillu Singh is headed as an application u/s 5(2) of the Act and it was claimed in this that relief be given to the petitioner under Act LXX of 1951. This particular debt although not admitted was mentioned at No. 1. Therefore these two proceedings, one u/s 10 and the other u/s 11(2) which is in the nature of an application u/s 5, were supplementary proceedings and one arose out of the other, the only difference being that the latter application had to be decided in order to decide the application u/s 10.

10. In my view the Tribunal could not dismiss the application and as he himself has pointed out it was a mistake on his part to have done so and it was certainly within the jurisdiction of a Tribunal when its attention was drawn to the fact to correct errors of this kind. That is the view which has been taken in several cases.

It was held, by Dalip Singh J. in *Kalu "Ram v. Ghazita Ram* AIR 1928 Lah 534 (2) (G), by Tek Chand J. in *Dhanpat Rai v. Badri Das* AIR 1936 Lah 759 (H), in *Fateh Chand v. Mt. Menghi Bai* 109 Pun Re 1913 (I) by the Calcutta High Court in *Adwaitanand Tirthaswami v. Basudeo Nand* 6 Ind Cas 208 (Cal) (J) and by the Nagpur High Court in AIR 1944 335 (Nagpur) The matter, in my opinion, is concluded by the judgment of the Federal Court in *Mt. Jamna Kuer v. Lal Bahadur* AIR 1950 FC 131 (L), where their Lordships laid down the following--

"Whether the error occurred by reason of the counsel's mistake or it crept in by

reason of an oversight on the part of the Court was not a circumstance which could affect the exercise of jurisdiction of the Court to review its decision. We have no doubt that the error was apparent on the face of the record and in our opinion the question as to how the error occurred is not relevant to this enquiry. A mere look at the trial Court's decision indicates the error apart from anything else."

11. It is quite clear that the order was made because of a mistake on the part of the Tribunal and he had jurisdiction to correct the error both under his powers of review and under its inherent jurisdiction. The principle *actus legis nemini est damnesus* has application to the facts of this case.

12. I would, therefore, dismiss this petition but leave the parties to bear their own costs throughout.