

(1940) 02 AHC CK 0007

Allahabad High Court

Case No: None

Mt. Kishni

APPELLANT

Vs

Murli Singh and Others

RESPONDENT

Date of Decision: Feb. 15, 1940**Citation:** AIR 1940 All 344 : (1940) 10 AWR 288**Hon'ble Judges:** Rachhpal Singh, J**Bench:** Division Bench**Final Decision:** Disposed Of

Judgement

Rachhpal Singh, J.

The principal point for determination in these cases is as to whether the order of the Court below holding that the claim was barred by limitation in view of the provisions of Section 9, Clause (3), Encumbered Estates Act, was correct. Section 9, Clause (3), Encumbered Estates Act, ordained as follows:

The written statement must be presented within the period specified in the notice, unless the claimant satisfies the 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.

2. The effect of this clause was that the creditor of the landlord applicant had to file his written statement within a total period of five months and if that was not done the Court had no power to give any further extension of time. It may in these circumstances be conceded that when the Courts below held that the written statements in these cases were not filed within limitation that view was perfectly correct and the order of the Courts below could not have been challenged in appeal or revision if there had not been any subsequent amendment of the law on the point. The law on the subject however has been changed by subsequent amendments and now as a result of those amendments Section 9, Clause (3) runs as follows:

The written statement must be presented within the period specified in the notice, unless the claimant satisfies the Special Judge that he had sufficient cause for not presenting it within such period, in which case the Special Judge may, subject to such orders as to costs 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 30th November 1939, whichever is later.

3. It is now clear that it is open to the Special Judge before he sends up the decrees passed by him to the Collector under the provisions of Section 19 to admit written statements though filed beyond the period of limitation for sufficient reason. In view of this amendment, the ruling of a Bench of this Court [Ashraf Vs. L. Saith Mal](#) , cannot go against the creditor. It was argued before me that the provisions of Section 13 would go against the creditor where the written statement of the claim by the creditor has not been made within a period which had been prescribed u/s 9 before the amendment. Section 13, Encumbered Estates Act, runs as follows:

Every claim decreed or undecreed against the landlord in respect of a private debt, other than a debt due to a Co-operative Society registered under the Co-operative Societies Act 2 of 1912, by its members, shall, unless made within the time and in the manner required by this Act, be deemed for all purposes and on all occasions to have been duly discharged.

4. This Section would be applicable to those cases only in which no appeal has been preferred. If a written statement has not been filed within the time prescribed and the Court holds that it has been filed beyond the period of limitation and against that decision there is no appeal or revision to this Court, the provisions of Section 13 might apply to that case. The creditor in that case might lose his remedy as ordained by Section 13, Encumbered Estates Act. But the position will be wholly different in regard to those cases in which an appeal or revision has been preferred. Section 13 cannot have any effect on such cases for the simple reason that the matter is still pending before the Court and unless the decision of the Appellate Court is given it cannot be said that Section 13 can come into play. The rights of the parties will be determined after the decision of the Appellate or Revisional Court and not before. In an unreported case, First Appeal from Order No. 97 of Mewa Ram v. Prithipal Singh, First Appeal from Order No. 97 of 1938, Decided on 6th November 1939, the Hon"ble Ismail J. held that by Section 9 of the Amending Act, Sub-section (3) of Section 9 had been amended and that the Court was now authorized to receive the statement (statement of claim by creditor) subject to such orders as to costs even if the statement was presented at a later date, provided good cause was shown and the statement was presented before the date on which the Special Judge sent the decrees to the Collector under the provisions of Section 19 or before 30th November 1939, whichever was later. In another unreported case, First Appeal No. 383 of Ali Mohamad v. S. Zahrul Hasan, First Appeal No. 383 of 1939, Decided on 8th November 1939, the same learned Judge held that it was now (after the

amendment) within the competence of the Court to entertain a fresh claim if the claimant is able to satisfy the Court that he was entitled to an indulgence. We have also another unreported case, First Appeal from Order No. 184 of Sri Krishna Singh v. Collector of Aligarh, First Appeal from Order No. 184 of 1937, Decided on 5th January 1940. This case was decided on 5th January 1940 by a Bench of two learned Judges of which I was a member. The view taken was that in view of the amendment made it was now within the competence of the Court to extend time for good cause shown. The following observations might be quoted here:

...The position however had changed now since the United Provinces Encumbered Estates Amendment Act 1939 came into force. Sub-clause (3) of Section 9 has been greatly altered and very wide powers have been given to the special Judge to admit written statements presented at any time before the date on which he sends the decree to the Collector under the provisions of Section 19 or before 30th November 1939, whichever is later.... That being so the Special Judge has full authority to accept the written statement although it has been presented beyond the period of grace allowed by Sub-clause (3). The claimant however will have to satisfy the Special Judge that he has sufficient cause for not presenting the written statement.

5. After a consideration of the matter, I feel satisfied that the correct view is that on account of the amendment made in the Encumbered Estates Act and in view of the provisions of Section 9, Clause (3) as they now stand it is open to the Special Judge before whom the claimant made his claim by filing written statement beyond the period fixed to extend that period for good cause shown. Section 13, Encumbered Estates Act, does not apply to those cases in which an appeal or revision has been preferred against the decision of the Court below. The provisions of Section 13 will come into operation only after the termination of the appeal or revision as the case may be. In the present case the written statement had already been filed by Mt. Kishni, the creditor, but was not filed within time. I think, in view of what I have mentioned above, it is necessary that the case should be sent back to the Court below with directions that the appellant should be given an opportunity to show that she had sufficient cause for not presenting the written statement within the period prescribed. If she satisfies the Court, she will be entitled to have her claim taken into consideration. For the reasons given above I allow this appeal, set aside the order passed by the Court below and send back the case to the trial Court with directions that the appellant should be given an opportunity to show that she had sufficient reasons for not presenting her written statement of claim within the period prescribed. If she succeeds then the case should be disposed of according to law. So far as the costs in this Court are concerned they will abide the result.