

this ground also I would refuse to interfere with the discretion exercised by the learned Subordinate Judge.

Shri Daulat Ram
v.
The State of
Punjab

Chopra, J.

In the result, the appeal fails and is dismissed. In view of the facts of the case, I leave the parties to bear their own costs.

REVISIONAL CIVIL.

Before Bhandari, C. J.

SHRI GIRDHARI LAL,—Petitioner.

versus

PANNA LAL,—Respondent.

Civil Revision No. 232 of 1956.

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Section 10—Code of Civil Procedure (V of 1908), Order 9, Rule 9, and Limitation Act (IX of 1908) Article 163—Application under section 10 dismissed in default—Fresh application under the same Section, without making an application under Order 9, Rule 9 of the Code of Civil Procedure, whether barred—Application to set aside dismissal for default of such application—Article 163 of Limitation Act, whether applies.

1957
May, 16th

Held, that it is not open to a creditor whose application under section 10 of the Displaced Persons (Debts Adjustment) Act 1951, has been dismissed in default to bring a fresh application for the same purpose without making an application under Order 9, Rule 9, of the Code of Civil Procedure.

Held also, that Article 163 of the Limitation Act applies to an application under Order 9, Rule 9 of the Code of Civil Procedure for restoration of the application under section 10 of the Displaced Persons (Debts Adjustment) Act, 1951, which was dismissed in default.

Petition under section 44 of Act 9 of 1919 and Section 115, Civil Procedure Code, for revision of the order of Shri A. N. Bhanot, Senior Sub-Judge, as Tribunal, Ludhiana, dated 4th April, 1956, dismissing the application.

HIRA LAL SIBAL, for the Petitioner.

SOM DATTA BAHRI, for the Respondent.

JUDGMENT.

Bhandari, C. J. **BHANDARI, J.**—This petition raises the question whether it is open to a creditor, whose application under section 10 of the Displaced Persons (Debts Adjustment) Act, 1951, has been dismissed in default, to bring a fresh application for the same purpose without making an application under Order 9 of the Code of Civil Procedure.

One Girdhari Lal presented an application under section 10 of the Displaced Persons (Debts Adjustment) Act, 1951, for the recovery of a sum of Rs. 4,165-10-0 on the basis of a registered mortgage deed, dated the 15th January, 1944. Neither the applicant nor his counsel was present in Court on the 5th October, 1955, when the case came up for hearing and the Tribunal constituted under the Act of 1951, accordingly dismissed the application in default. The applicant did not apply for a restoration of the application under the provisions of Order 9 of the Code of Civil Procedure, but on the 18th November, 1955, presented a fresh application under section 10 of the Act of 1951. The Tribunal came to the conclusion that in view of the provisions of section 25 of the Act of 1951, the second application was not maintainable, for it was the duty of the applicant if he was aggrieved by the order of dismissal in default to present an application under the provisions of Order 9, rule 9, of the Code of Civil Procedure. The creditor is dissatisfied with the order and has come to this Court in revision.

Section 25 of the Act of 1951 is in the following terms:—

“25 Save as otherwise expressly provided in this Act or in any rules made thereunder, all proceedings under this Act shall be regulated by the provisions contained in the Code of Civil Procedure, 1908.”

Although it is a well settled rule that an order of dismissal not involving the merits is not a bar to a subsequent action, the Code of Civil Procedure declares that if an application is dismissed in default the petitioner shall be precluded from bringing a fresh application in respect of the same cause of action. As all the proceedings under the Act of 1951 are to be regulated by the provisions contained in the Code of Civil Procedure, it seems to me that *prima facie* the failure on the part of the creditor to present an application under Order 9, rule 9, of the Code of Civil Procedure precludes him from presenting a fresh application under the provisions of section 10 of the Act of 1951.

Girdhari Lal
v.
Panna Lal
Bhandari, C. J.

But Mr. Sibal, who appears for the creditor, contends that the Legislature has expressly provided in the body of the Act of 1951 that a second application can be presented under the provisions of section 10 and invites my attention to section 44 of the statute in support of his contention. This section runs as follows:

“44. Subject to the other provisions contained in this Act, where an application made by a displaced debtor under section 5 or subsection (2) of section 11, or by a displaced creditor under section 13 has been dismissed, no further application for the same purpose shall lie.”

As the express mention of one thing implies the exclusion of another, it is argued, the express mention of the fact that where an application under section 5, or section 11(2) or section 13, has been dismissed, a fresh application shall not lie, implies that where an application under section 10 has been dismissed a second application shall be competent. This line of argument is open to two objections. The first is that

Girdhari Lal
v.
Panna Lal
Bhandari, C. J.

the provisions of section 44 are subject to the other provisions contained in the Act of 1951, and section 25 declares in unambiguous language that all proceedings under this Act shall be regulated by the provisions contained in the Code of Civil Procedure. It seems to me, therefore, that if an application under section 5 or section 11(2) or section 13 is dismissed in default of the appearance of the applicant it must first be restored under the provisions of order 9, rule 9, before the subject matter of the application can be re-agitated. The second objection is that in any case the prohibition to the presentation of a fresh application applies only when the original application was dismissed on the merits and not if the original application was dismissed for want of prosecution. My attention has not been invited to any provision of law which declares in express terms that the provisions of Order 9, rule 9 of the Code of Civil Procedure will not apply to any application under section 10, which has been dismissed in default of the appearance of the creditor.

Again, it was contended that even though the provisions of the Code of Civil Procedure may apply to an application dismissed in default, the provisions of the Indian Limitation Act cannot apply to such an application. This contention too appears to me to be devoid of force. Article 163 of the Limitation Act clearly provides that the period of limitation prescribed for an application by a plaintiff for an order to set aside a dismissal for default of appearance is 30 days from the date of dismissal.

For these reasons I entertain no doubt in my mind that the provisions of the Code of Civil Procedure apply to an application under section 10, which is dismissed in default. As an application for restoration of the application, which was dismissed

in default on the 5th October, 1955, was not presented in Court within a period of 30 days from the date of dismissal, the order of dismissal became final and conclusive between the parties. I would, accordingly, uphold the order of the Tribunal and dismiss the petition, but in view of the circumstances of the case leave the parties to bear their own costs. Ordered accordingly.

Girdhari Lal
v.
Panna Lal
Bhandari, C. J.

SUPREME COURT.

Before N. H. Bhagwati, Sudhanshu Kumar Das and
J. L. Kapur, JJ.

THE COMMISSIONER OF INCOME-TAX,—Appellant.

versus

SHRIMATI SODRA DEVI,—Respondent.

AND

Civil Appeal No. 322 of 1955.

SHRIMATI DAMAYANTI SAHNI, PARTNER, OF M/S.
ISHAWAR DAS SAHNI AND BROS.,—Appellant.

versus

THE COMMISSIONER OF INCOME-TAX,—Respondent.

Civil Appeal No. 25 of 1955.

Income-tax Act (XI of 1922)—Section 16(3)(a)(ii)—the word "Individual"—Whether includes also a female—Income of minor sons from a partnership to the benefits of which they have been admitted—Whether liable to be included in the income of the mother, who is a member of that partnership—Interpretation of Statutes—Normal rule—When to be departed from—Words used being ambiguous—Reference to surrounding circumstances—Whether permissible—Statement of objects and reasons—Whether can be referred to—Construction—Meaning of—Intention of Legislature—How to be gathered in cases where the words used are unambiguous and where ambiguous.

1957

May, 17th