

Municipal Committee Kharkhoda v. Bhim Singh (G. C. Mital, J.)

settle the dispute of apportionment finally but no such consideration would be available for impleading a third party in case like the present one which would necessarily result in the enlargement of the scope of the reference and would, in fact, introduce a new dispute not already covered by the reference. In spite of this distinction having been pointed out to the learned counsel for the petitioner, he could not produce even a single decision in which a third person's prayer for being impleaded was granted when the reference did not contain any question of apportionment of the compensation. In all the three decisions i.e. *Mt. Sakalbaso Kuer's case* (supra), *Bhadar Munda and another v. Dhuchua Oraon* (4) and *Kalarikkal Lakshmikutty Amma v. Kankath Vettolil Kanhirapally* (5), relied upon by him, the references related to apportionment between rival claimants and a third person, who claimed the right to receive compensation, was ordered to be impleaded as a party to settle the question finally. Consequently, so far as the present case is concerned, the petitioner, who never made any claim before the Collector under section 9 nor moved any application for a reference under section 30 of the Act to assert his right to receive the compensation as opposed to the persons who got the reference made under section 18 of the Act for enhancement of the compensation, would have no right to get himself impleaded as a party under Order I, rule 10, Code of Civil Procedure, and his right to receive compensation decided in that reference. This petition, therefore, must fail and is hereby dismissed but without any order as to costs.

R.N.R.

Before G. C. Mital, J.

MUNICIPAL COMMITTEE KHARKHODA,—Petitioner.

versus

BHIM SINGH,—Respondent.

Civil Revision No. 3489 of 1986.

March 2, 1987.

Code of Civil Procedure (V of 1908)—Sections 35-B, 148 and 151—Costs—Trial Court striking off defence for non-payment of costs—Defendant applying for recall of order and for enlargement

(4) A.I.R. 1970 Patna 209.

(5) A.I.R. 1973 Kerala 79.

of time to furnish costs—Application dismissed for want of jurisdiction to review order under Section 35-B—Court—Whether has inherent jurisdiction to recall its order striking off defence for non-payment of costs—Enlargement of time—Whether court has jurisdiction to entertain application for extending time for payment of costs.

Held, that an application for recalling the order passed under Section 35-B of the Code of Civil Procedure, 1908, is maintainable under Section 151 read with Section 148 of the Code and if the Court is satisfied, it has the power to recall the order striking off the defence and grant more time for payment of costs. Since there is no specific provision under Section 35-B of the Code, Section 151 could be attracted under its inherent jurisdiction. If the Court is satisfied that there was sufficient cause for the defaulting party for not paying the costs on the date fixed the Court can enlarge the time under section 148 of the Code.

(Paras 3 and 4)

Petition under section 115 CPC of Act, 1908 against the order of Shri A. K. Suri, Sub Judge 2nd Class, Sonapat, dated 30th September 1986 dismissing the application and setting aside the order dated 13th May, 1986 with no order as to costs.

S. K. Bansal, Advocate, for the petitioner.

H. S. Gill, Advocate, for the respondent.

JUDGMENT

(1) The point involved in this bunch of revision petitions is whether a Court, which passes an order under section 35-B of the Code of Civil Procedure (for short 'the Code') striking off defence for not paying costs, can recall/review its order and/or extend time for payment of costs under section 151 and/or section 148 of the Code, on sufficient cause being shown.

(2) On 1st March, 1986 the lawyer for the petitioner (defendant in the suit) did not appear and the trial Court ordered *ex parte* proceedings. Thereafter, an application was filed on its behalf for setting aside the *ex parte* proceedings. On 31st March, 1986 the order dated 1st March, 1986 was recalled on payment of Rs. 100 as conditional costs and the case was adjourned to 13th May, 1986 for payment of costs and for the plaintiff to produce his witnesses. On 13th May, 1986 the costs were not paid and the Court invoked the

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provisions of section 35-B of the Code and struck off the defence and adjourned the case to 22nd August, 1986 for plaintiff's witnesses. There was no note whether the plaintiff's witnesses were summoned for or present on 13th May, 1986. Thereafter the defendant filed an application before the trial Court for recalling order dated 13th May, 1986 and to grant more time for payment of costs for the reasons stated in the application. That application has been dismissed by the trial Court,—vide order dated 30th September, 1986 with the observations that it had no jurisdiction to review the earlier order. It also noticed that the defendant had moved the High Court in revision against the order dated 13th May, 1986. The first set (C.R. Nos. 2331 to 2336 of 1986) is against the orders dated 13th May, 1986 and the second set (C.R. Nos. 3489 to 3494 of 1986) is against the orders dated 30th September, 1986.

(3) The only point which falls for consideration at the present moment, as noticed at the outset, is whether the trial Court had jurisdiction to entertain the application for extending time for payment of costs either under section 148 and/or section 151 of the Code. I am of the opinion that an application for recalling the order passed under section 35-B of the Code is maintainable under section 151 read with section 148 of the Code, and if the Court is satisfied, it has power to recall the order striking off defence and grant more time for payment of costs.

(4) For the aforesaid view I draw analogy from Order 9, Rule 4; Order 9, Rule 7; Order 9, Rule 9; and Order 9 Rule 13 of the Code. It is true that in all these rules specific provision is made permitting the defaulting party to move the Court for recalling or modifying the order. Since there is no specific provision under section 35-B of the Code, section 151 of the Code would be attracted under its inherent jurisdiction. If the Court is satisfied that there was a sufficient cause for the defaulting party for not paying the costs on the date fixed, the Court can enlarge the time under section 148 of the Code. That is why there are certain observations in the Full Bench judgment of this Court, reported as *Shri Anand Parkash v. Shri Bharat Bhushan Rai and another* (1), which are to the following effect:—

“.....However, where the costs are not paid as a result of the circumstances beyond the control of the defaulting party,

(1) 1981 P.L.R. 555,

then the Court will be well within its jurisdiction to exercise its power under section 148 of the Code in favour of the defaulting party if a strong case is made out for the exercise of such jurisdiction."

(5) Sometimes it may not be possible to furnish the explanation for the default on the date fixed. To illustrate; if a party is coming to the court with the costs and in the way meets with an accident and instead of landing in the court it lands in the hospital, there may not be sufficient time to furnish these facts before the court and by the time the facts are brought to the notice of the court, it may be late and the court may have struck off the defence for non-payment of costs. Therefore, by and large the application may be moved after the event and the court will have to decide on the given facts of the case whether a case for extension of time or for recalling the order has been made out or not. Accordingly, I am of the view that the court below has failed to exercise its jurisdiction in not considering the application for extension of time on merits.

(6) For the reasons recorded above, Civil Revisions No. 3489 to 3494 of 1986 are allowed and the orders of the trial Court dated 30th September, 1986 are set aside with a direction to it to decide the applications afresh on merits on the basis of the affidavits, without full trial as is in a suit, in short time, preferably within three months from today. The other revisions i.e. Civil Revision Nos. 2331 to 2336 of 1986 also stand disposed of. No costs.

(7) The parties through their counsel are directed to appear before the trial Court on 2nd April, 1987.

R.N.R.

Before D. S. Tewatia and M. R. Agnihotri, JJ.

GURMEET SINGH GILL AND OTHERS,—*Petitioners*

versus

THE CHIEF AGRICULTURAL OFFICER, ROPAR AND
OTHERS,—*Respondents.*

Civil Writ Petition No. 6259 of 1986.

March 3, 1987.

*Constitution of India, 1950—Article 226—Entitlement to City
Compensatory Allowance—Executive instructions granting allowance*