

## APPELLATE CIVIL

Before Ranjit Singh Sarkaria, J.

M/S RAJDHANI ENTERPRISES (PVT.) LTD.—Appellants.

versus

HARYANA FINANCIAL CORPORATION AND ANOTHER,—Respondents.

First Appeal from Order No. 155 of 1968

September 12, 1969

*State Financial Corporations Act (LXIII of 1951)—Section 32—Code of Civil Procedure (V of 1908)—Order 9 Rule 13 and Order 43 Rule 1—Procedure of District Judge under section 32—Applicability of Code of Civil Procedure—Extent of—Stated—Ex parte order passed by District Judge—Application for setting it aside—Whether maintainable under Order 9, Rule 13—Order rejecting such application—Appeal against—Whether lies only under section 32(9) and not under Order 43, Rule 1(d).*

Held, that it is clear from a study of sub-section (6) of section 32 of Financial Corporations Act, 1951, that the District Judge has to apply the provisions of the Code of Civil Procedure *only in so far as* the investigation of the claim of the Financial Corporation is concerned. Once the investigation is completed in accordance with the Code, the order of adjudication thereon is to follow under any of the clauses of sub-section (7) of section 32 of the Act. That is to say, even if the investigation made by the District Judge in accordance with the provisions of the Code, culminates in an *ex parte* adjudication on merits, the order will still be an order under the aforesaid sub-section (7). It will not be a 'decree' as defined in section 2 of the Code, because (i) it is not an adjudication given *in a suit*, but in special proceedings commenced on an application under the Act; and (ii) it is an adjudication from which an appeal lies under section 32(9) of the Act, as an appeal from an order. No application, therefore, under Order 9, Rule 13, Civil Procedure Code, is competent, the *ex parte* order not being an *ex parte decree*. For the same reason, the order rejecting the application to set aside the *ex-parte* order was not appealable under Order 43, Rule 1(d), of the Code. A right of appeal is not a mere matter of procedure. It is a substantive right, which can be conferred only by the express and clear words of a statute or rules framed thereunder. If the right is the creature of a special statute, its scope must be determined by reference to the provisions of that statute only. The Act confers a special jurisdiction on the District Judge. Section 32(6) of the Act permits the application of the provisions of the Code for a limited purpose only, viz., the investigation of the claims of the Financial Corporation. The District Judge

is not required to give his adjudication under the Act as an ordinary civil Court with all the incidents of that jurisdiction, including the right of appeal. Thus considered, it is clear that the only remedy available to the aggrieved party is to file an appeal under section 32(9) of the Act against the *ex parte* order within the prescribed period of 30 days from the date of the order. (Para 6)

*First Appeal from order of the Court of Shri H. D. Loomba, District Judge, Gurgaon, dated the 21st June, 1968, rejecting the application for setting aside ex parte order.*

V. P. GANDHI, ADVOCATE, for the Appellant.

K. L. KAPUR, ADVOCATE, for the Respondents.

#### JUDGMENT

SARKARIA, J.—This first appeal is directed against the order, dated 21st June, 1968, of the learned District Judge, Gurgaon, by which he rejected an application made by the appellant for setting aside an *ex parte* order, dated 2nd May, 1968. It arises out of the following facts :—

(2) The respondent (Haryana Financial Corporation) made an application, claiming to recover a certain amount from Messrs Rajdhani Enterprises Ltd., under section 31 of the State Financial Corporations Act, 1951 (hereafter referred to as the Act'). The defendants contested the claim. The evidence of the parties was concluded and the case was fixed for final arguments before the District Judge on 16th April, 1968. Counsel for the judgment-debtors requested for an adjournment, stating that the case would be compromised by the next date. This request was acceded to and the case was fixed for arguments on 27th April, 1968. On this adjourned date, the judgment-debtors or their counsel failed to appear. The District Judge heard the arguments of the applicant's counsel and adjourned the case to 2nd May, 1968, for announcement of orders. On that day he passed an *ex parte* order in favour of the petitioner. On 1st June, 1968, the petitioner ('decreeholder') took out execution of the order. On the same day, the 'judgment-debtors' made an application for setting aside the *ex parte* order on the ground that there was sufficient cause for non-appearance of the appellants and their counsel. The District Judge has rejected that application on the ground that the case was decided on merits and it was no use rehearing the arguments of the judgment-debtors. Hence this appeal by the 'judgment-debtors'.

M/s Rajdhani Enterprises (Pvt.) Ltd. v. Haryana Financial Corporation  
and another (Sarkaria, J.)

(3) A preliminary objection has been taken by Mr. K. L. Kapur, learned counsel for the respondent, that this appeal is time-barred. My attention has been drawn to sub-section (9) of section 32 of the Act, which prescribes 30 days' limitation for filing an appeal to the High Court against an order made under sub-section (5) or sub-section (7) of section 32. Viewed in this manner, maintain Mr. Kapur, the appeal is time-barred by 23 days.

(4) In reply, Mr. V. P. Gandhi, learned counsel for the appellant maintains that the order appealed against does not fall under sub-section (5) or sub-section (7) of section 32 of the Act, but this is an order made under Order 9, Rule 13, Civil Procedure Code, and, as such, was appealable and the period of limitation prescribed for such an appeal is 90 days from the date of the order. Looked at from this angle, says Mr. Gandhi, the appeal was fully within time. He has also stressed that no objection was taken by the other side with regard to the competency of the application made by him under Order 9, Rule 13, Civil Procedure Code, for setting aside the *ex parte* order. It is, therefore, says the counsel, now too late in the day for the respondent to say that this appeal is filed under sub-section (9) of section 32 of the Act and, as such, is time-barred.

(5) The material part of section 32 of the Act reads as follows:—

“32. *Procedure of District Judge in respect of applications under section 31.*—(1) When the application is for the reliefs mentioned in clauses (a) and (c) of sub-section (1) of section 31, the District Judge shall pass an *ad interim* order attaching the security, or so much of the property of the industrial concern as would on being sold realise in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken under section 31, with or without an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment.

(2) ... ..

(3) ... ..

(4) At the same time as he passes an order under sub-section (1), the District Judge shall issue to the industrial concern

a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it to show cause on a date to be specified in the notice why the *ad interim* order of attachment should not be made absolute or the injunction confirmed.

- (5) If no cause is shown on or before the date specified in the notice under sub-sections (2) and (4), the District Judge shall forthwith make an *ad interim* order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.
- (6) If cause is shown, the District Judge shall *proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908 (Act V of 1908), in so far as such provisions may be applied thereto.*
- (7) After making an investigation under sub-section (6), the District Judge may—
- (a) confirm the order of attachment and direct the sale of the attached property ;
- (b) ... ..
- (c) ... ..
- (d) ... ..
- (e) ... ..
- (8) ... ..
- (9) Any party aggrieved by an order under sub-section (5) or sub-section (7) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper.
- (10) ... ..
- (11) ... ..

M/s Rajdhani Enterprises (Pvt.) Ltd. v. Haryana Financial Corporation  
and another (Sarkaria, J.)

---

(6) It will be clear from a study of sub-section (6) quoted above, that the District Judge has to apply the provisions of the Code of Civil Procedure *only in so far as* the investigation of the claim of the Financial Corporation is concerned. Once the investigation is completed in accordance with the Code of Civil Procedure, the order of adjudication thereon is to follow under any of the clauses of sub-section (7) of section 32 of the Act. That is to say, even if the investigation made by the District Judge in accordance with the provisions of the Code of Civil Procedure, culminates in an *ex parte* adjudication on merits, the order will still be an order under the aforesaid sub-section (7). It will not be a 'decree' as defined in section 2 of the Code, because (i) it is not an adjudication given *in a suit*, but in special proceedings commenced by an application under the Act; and (ii) it is an adjudication from which an appeal lies under section 32(9) of the Act, as an appeal from an order. No application, therefore, under Order 9, Rule 13, Civil Procedure Code, was competent, the *ex parte* order not being an *ex parte decree*. For the same reason, the order rejecting the application to set aside the *ex parte* order was not appealable under Order 43, Rule 1(d), of the Code. A right of appeal is not a mere matter of procedure. It is a substantive right, which can be conferred only by the express and clear words of a statute or rules framed thereunder. If the right is the creature of a special statute, its scope must be determined by reference to the provisions of that statute only. The Act confers a special jurisdiction on the District Judge. Section 32(6) of the Act permits the application of the provisions of the Code of Civil Procedure for a limited purpose only, viz., the investigation of the claim of the Financial Corporation. The District Judge is not required to give his adjudication under the Act as an ordinary Civil Court with all the incidents of that jurisdiction, including the right of appeal. Thus considered, it is clear that the only remedy available to the aggrieved party was to file an appeal under section 32(9) of the Act against the *ex parte* order within the prescribed period of 30 days from the date of the order.

(7) However, this appeal could be treated as an appeal under sub-section (9) of section 32 from the *ex parte* order whereby the claim of the Corporation was adjudicated. That order was passed by the District Judge on 21st June, 1968. Application for obtaining copies of the orders was made on 26th July, 1968. The copies were ready and delivered on 1st August, 1968. The appeal was presented in this Court on 13th August, 1968. After deducting the time taken for obtaining copies of the orders, it will be seen that the appeal is time-barred

by 23 days. Thus, the appeal is liable to be dismissed on this preliminary ground alone.

(8) On merits also, I do not find any force in this appeal. The case was fixed for final argument on April 37, 1968, at the request of the judgment-debtor. It was first called for hearing at 11.00 a.m. when the counsel for the Financial Corporation was present, but that of the respondents judgment-debtor was absent. It was then adjourned to 2.30 p.m. in the hope that the respondent or his counsel would turn up. At 2.30 p.m. also, the respondent and his counsel were absent. Thereupon, the Court heard the counsel for the decree-holder and postponed the announcement of the orders to 2nd May, 1968. At 13.05 p.m., an ordinary telegram was sent from Delhi on behalf of the counsel for the judgment-debtor that he was ill. This telegram was received by the District Judge after Court hours at 7.15 p.m. It is significant to note that thereafter also the 'judgment-debtor' slept over the matter. It was only on 1st June, 1968, when the Corporation took out execution of the order that the judgment-debtor filed the application for setting aside the *ex parte* decision. The conduct of the judgment-debtor prior to the decision during the investigation of the claim, also, shows that every attempt was made to delay matters. Notice of the claim-petition was given to the judgment-debtor for 19th June, 1967. He filed the written statement on 26th August, 1967. The case was set down for 1st October, 1967. The replication was filed on 18th November, 1967. It was then adjourned at the appellant's request to 29th December, 1967. The issues were framed. The case was then adjourned to 24th February, 1968, for evidence. It was then adjourned to 2nd April, 1968, for appellant's evidence. Appellant was absent on that day also. *Ex parte* proceedings were taken. The case was then fixed for arguments on 16th April, 1968. On this day, the appellant's counsel appeared and requested for an adjournment on the ground that the case would be compromised by the next date. The request was granted and the case was adjourned to 27th April, 1968, for arguments. On this date, the appellant again absented himself. His counsel also did not turn up. It was for the appellant to make arrangements for informing the Court about the illness of their counsel or for the appearance of another counsel on the date fixed. In the circumstances, the Court was justified in not putting further premium on this procrastination, delay and laxity on the part of the appellant. In other words, there was no sufficient cause for setting aside the *ex parte* decision.

Parkash Chander Batra and another v. The State of Haryana and others  
(Sandhawalia, J.)

(9) For the foregoing reasons, I would dismiss this appeal with costs. Counsel's fee: Rs. 50.

N. K. S.

CIVIL MISCELLANEOUS

Before Harbans Singh and S. S. Sandhawalia, JJ.

PARKASH CHANDER BATRA AND ANOTHER,—Petitioners.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ No. 199 of 1969

September 15, 1969.

*The Punjab Municipal (Executive Officer) Act (II of 1931)—Sections 3(1) and 3(4)—Executive Officer—Government's power of appointment of—Whether must be for a fixed period of five years—Renewal of such appointment by the Government—Whether can exceed a period of five years in all.*

*Held*, that the resultant difference that arises by the use of the extra word 'not' in section 3(4) of the Punjab Municipal (Executive Officer) Act, which has not been used in section 3(1) is that whereas under section 3(1) the Municipal Committee when appointing an executive Officer can do so only for a fixed period of five years there exists no such limitation on the power of the Government when appointing an Executive Officer under section 3(4). The Government would be wholly within the ambit of the last mentioned provisions in appointing an Executive Officer for a period of less than five years, e.g., for one, two or three years as it may deem fit.

(Para 5)

*Held*, that the words 'for a renewable period not exceeding five years' in sub-section (4) of section 3 of the Act does not mean that the power of the Government even to renew cannot in the total ever exceed a period of five years. There is no warrant for the proposition that this sub-section should be so construed as to bring in the words 'in all' after the above said words, when the legislature had not chosen to place them therein. Sub-section (4) does not lay down any fetter on the overall period in case of the renewal of the appointment of an Executive Officer and the power of the Government to renew the appointment beyond a period of five years does exist under this sub-section.

(Para 6)