

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Falshaw, J.

SITA RAM AND OTHERS,—Appellants.

versus

BASHI RAM,—Respondent.

Letters Patent Appeal No. 24 of 1957.

1959

Sept., 25th

Code of Civil Procedure (V of 1908)—Order 9 Rule 9—Provisions of—Whether apply to proceedings under the Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 25 and 44—Effect of.

Held, that section 25 of the Displaced Persons (Debts Adjustment) Act, 1951 makes the provisions of the Code of Civil Procedure applicable to all proceedings under the said Act and section 44 of that Act subjects the provisions contained in that section to the other provisions contained in the Act including section 25. It follows as a consequence that the provisions of Rule 9, Order IX of the Code apply to the proceedings under Act LXX of 1951. If an application is dismissed in default, it is not within the power of the applicant to present or in the power of the Tribunal to entertain a second application unless the order of dismissal is first set aside.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment, dated 20th December, 1956 of the Hon'ble Mr. Justice Gurnam Singh, passed in F.A.O. No. 50 of 1954, whereby the order of Shri Sheo Parshad, Senior Sub-Judge with Tribunal powers at Rohtak, dated, the 9th day of December, 1953, passing a decree in favour of the plaintiffs was affirmed.

H. R. SODHI. for Appellants.

NEMO, for Respondent.

JUDGMENT

Bhandari, C. J. BHANDARI, C.J.—This appeal under Clause 10 of the Letters Patent raises the question whether the provisions of Rule 9, Order IX, of the Code of

Civil Procedure apply to proceedings under the Displaced Persons (Debts Adjustment) Act, 1951.

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On 13th September, 1946, Brij Lal, Krishan Gopal and Ram Nath mortgaged their houses in Pakistan to one Banshi Ram for a sum of Rs. 10,000. On 11th May, 1952, the mortgagee presented an application under Section 10 of the Displaced Persons (Debts Adjustment) Act 1951, in which he prayed that the said money be created as the first charge on the compensation, if any, payable to the respondents in respect of the mortgaged property. When this application came up for hearing before the Tribunal, the mortgagee was not present either in person or through counsel but the counsel for the mortgagors was present. The Tribunal accordingly dismissed the mortgagee's application in default.

On the 21st May, 1953, the mortgagee presented a fresh application under Section 10 of the Act of 1951 in which he repeated the prayer which had been made by him in the earlier application. The mortgagors resisted this application and stated that as the first application presented by the mortgagee was dismissed in default and as no application was made for the setting aside of the order of dismissal it was not within the competence of the Tribunal to entertain the second application. The Tribunal came to the conclusion that the provisions of the Code of Civil Procedure do not apply to the case and that there is no provision in the Act of 1951 which bars such applications. In this view of the case the Tribunal dismissed this plea, passed a decree in the sum of Rs. 10,000 and directed that this amount shall be the first charge on the compensation, if any, paid in respect of the mortgaged property. The order of the Tribunal was upheld by a learned Single Judge of this Court. The mortgagors have appealed.

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The one and only question which requires determination in the present case is whether the provisions of Order IX, Rule 9, of the Code of Civil Procedure apply to proceedings under the Act of 1951. If the answer is in the affirmative the order of the Tribunal must be set aside.

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

“25. APPLICATION OF ACT V OF 1908.
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.”

Section 44 enacts :—

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

Section 141 of the Code of Civil Procedure declares that the procedure prescribed in the Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction.

The learned counsel for the mortgagee contends that the provisions of Order IX, Rule 9 of the Code of Civil Procedure do not apply to proceedings under the Act of 1951, and has made two submissions in support of this contention. It is contended in the first place that the Act of 1951

makes no provision for the restoration of an application dismissed in default. Secondly, it is contended that although Section 44 of the said Act declares that where an application made by a displaced debtor under Section 5 or under Section 11(2) or by a displaced creditor under Section 13 has been dismissed no further application for the same purpose shall lie, it does not declare that if an application is dismissed in default under Rule 8 of Order IX of the Civil Procedure Code, a fresh application shall not be presented. It contains no provision analogous to Rule 9 of Order IX of the Code of Civil Procedure.

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I regret I am unable to concur in this contention. Section 25 makes the provisions of the Code of Civil Procedure applicable to all proceedings under the Act of 1951 and Section 44 subjects the provisions contained in the said Section to the other provisions contained in the Act including Section 25. Indeed the order by virtue of which the Tribunal dismissed the mortgagee's application in default was presumably passed in exercise of the powers conferred by Order IX, Rule 8 of the Code of Civil Procedure. It follows as a consequence that the provisions of Rule 9, Order IX of the Code apply. As the application, dated 11th May, 1952, was dismissed in default it was not within the power of the mortgagee to present or in the power of the Tribunal to entertain a second application unless the order of dismissal was first set aside.

For these reasons, I would allow the appeal, set aside the order of the learned Single Judge and dismiss the mortgagee's application. There will be no order as to costs.

FALSHAW, J.— I agree.

B.R.T.