REVISIONAL CIVIL.

Before Kapur, J.

DHILLU SINGH,—*Petitioner.*

versus

SOHAN SINGH AND OTHERS,—*Respondents.*

Civil Revision No. 113-D of 1955

1955

Nov., 18th

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 5, 10, 11 and 25—Applications under sections 5 and 10 pending—Section 10, application dismissed for default—Application for restoration of section 10 application—Rule in such cases stated—Civil Procedure Code (V of 1908)—Section 151 and Order IX, Rule 9.

Application under section 10 of the Displaced Persons (Debts Adjustment) Act by S. against D.S. and S.S. filed on 15th March, 1952. On 16th February, 1953, D.S. made an application under section 5 of the Act as is required by section 11(2). The tribunal before whom these applications were pending on 10th November, 1953, ordered the parties to appear before another tribunal that very day as the proceedings had been transferred to that other Tribunal. As S. did not appear his application under section 10 was dismissed and the section 5 application of D.S. was adjourned for service. On 19th January, 1954, S. applied for restoration of his application under section 151, Civil Procedure Code, read with section 25 of the Debts Adjustment Act. D.S. raised objection to the restoration of the application on the grounds that it was barred by time, that there was no sufficient cause under Order IX, Rule 9, Civil Procedure Code, and that section 151 Civil Procedure Code did not apply. The objections of D.S. were rejected and the application under section 10 was restored. D.S. moved the High Court in revision against the order of restoration.

Held, that the application under section 10 remains in abeyance and when the matter under section 5 is decided naturally the debt claimed under section 10, if found to be due, becomes adjusted under section 5 and, therefore,

when the application on the 16th February, 1953. was made by D.S. under section 5 that became the principal proceedings and section 10 proceedings became merely a subsidiary proceedings to be decided either when the matter under section 5 is decided or if no such application was made then independently. Therefore, nothing was to be done under section 10 until the matter under section 5 was decided. The Tribunal could not dismiss the application and as he himself has pointed out it was a mistake on his part to have done so and it was certainly within the jurisdiction of a Tribunal when its attention was drawn to the fact to correct errors of this kind. The order having been made by mistake the tribunal had the jurisdiction to correct the error both under his powers of review and under its inherent jurisdiction. The principle *Actus legis nemini est damnosus* has application to the facts of this case.

Petition under section 115 of C.P.C. and Article 227 of the Constitution of India for revision of the order of Shri G. K. Bhatnagar, P.C.S., Tribunal, Delhi, dated the 10th December, 1954, restoring the application under section 10 of the Displaced Persons (Debts Adjustment) Act LXX of 1951.

R. S. NARULA, for Petitioner.

ANUP SINGH for Respondent.

ORDER.

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KAPUR, J. This is a rule obtained against an order made by Mr. Bhatnagar acting as a Tribunal, Delhi, dated the 10th December, 1954, setting aside the order of dismissal in default of an application made under section 10 by Sohan Singh, dated the 10th of November, 1953, under the provisions of section 151 of the Code of Civil Procedure.

On the 15th March 1952 Sohan Singh made an application under section 10 of the Displaced Persons (Debts Adjustment) Act LXX of 1951, and

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the debt mentioned therein was dated the 12th May 1947 which it was alleged was due from Dhillu Singh and Saran Singh. On the 16th February 1953 Dhillu Singh made an application under section 5 of that Act as is required by section 11 (2) of the Act.

These two matters were pending in the Court of Mr. Hans Raj who on the 10th November 1953 ordered the parties to the two applications to appear before Mr Bhatnagar on that very day as they had been transferred to that Tribunal. As Sohan Singh did not appear before Mr. Bhatnagar the application under section 10 was ordered to be dismissed at 4-45 p.m. and the case under section 5 was adjourned for service. In the proceedings under seciton 5 Mr Sardara Singh appeared for Sohan Singh on the 17th December, 1953, before Mr. Bhatnagar.

On the 19th January 1954 Sohan Singh applied for restoration of his application under section 151, Civil Procedure Code, and section 25 of the Debts Adjustment Act, The reasons given for non-appearance were that both the cases were sent from the Court of Mr. Hans Raj and there was no list of causes showing Sohan Singh's case outside the Court of Mr. Bhatnagar and on enquiring about section 5 application the petitioner came to know that it had been adjourned to the 17th December on which date he appeared and the case was adjourned to the 23rd February 1954 and that when he examined the file the applicant came to know that the petition under section 10 had been dismissed in default.

Dhillu Singh objected to the restoration on the ground that the application was barred by time and that there was no sufficient cause under Order IX rule 9 for its restoration and also that there was no ground for review nor did the matter fall under section 151 of the Code of Civil Procedure. The learned Judge, however, treated the

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matter as a mistake of the Court and held that there was no bar for exercising his powers under section 151 and restored the case on the 10th December 1954.

The petitioner laid stress on the point that as there is a specific provision in the Civil Procedure Code—Order IX, Rule 9—the inherent powers of the Court cannot be invoked and as the application is barred by time and no sufficient cause has been shown, the petition cannot be restored under Order IX, Rule 9. He has relied on several cases of the Lahore High Court and other High Courts. In all of these cases the *ratio decidendi* was that the inherent powers of the Court cannot be invoked where the application for restoration is barred by time. These cases are *Firm Duni Chand-Gokal Chand* v. *Pritam Das and others* (1), *Jai Kishan Das* v. *Chiragh Din* (2), *Karam Bhari* v. *Jagan Nath* (3), *Debendra Nath* v. *Sm. Satyabala Dasi and others* (4), *Karai Chinnappa Naidu* v. *B. K. Deenadayalu Naidu*, (5), and *Aung Gyi* v. *Government of Burma and others* (6). These cases are, in my opinion, not applicable to the facts of the present case. The nature of the proceedings under the Debts Adjustment Acts are of a different kind altogether. The preamble shows that the object of the Act is the adjustment of debts by displaced persons and the recovery of certain debts due to them.

The scheme of the Act shows that if a debtor wants to make an application for the settlement of his debts he must do so under section 5 of the Act within one year of the coming into force of the Act. Then the section prescribes the particulars which are to be given by the debtor making

(1) A.I.R. 1925 Lah. 321
(2) A.I.R. 1935 Lah. 60
(3) A.I.R. 1936 Lah. 495
(4) A.I.R. 1950 Cal. 217
(5) A.I.R. 1948 Mad. 480
(6) A.I.R. 1945 Rang. 162

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the application. Section 10 deals with the claims by creditors against displaced debtors and it does not prescribe any limit of time within which these applications can be made. The procedure in such applications is that the Tribunal has to cause notice to be served on displaced debtors and then a displaced debtor can make an application under section 5 and the Tribunal is to proceed as if the proceedings commenced with an application by a displaced debtor under section 5 and all the other provisions of the Act become applicable, but if no such application is made, the claim of the creditor is to be adjudicated upon and therefore when an application is made under section 5, the Tribunal has to proceed further in that application treating the matter as if the whole thing had commenced with an application under section 5. In other words, the application under section 10 remains in abeyance and when the matter under section 5 is decided naturally the debt claimed under section 10, if found to be due, becomes adjusted under section 5 and therefore when the application on the 15th February 1953 was made by Dhillu Singh under section 5 that became the principal proceedings and section 10 proceedings became merely a subsidiary proceedings to be decided either when the matter under section 5 is decided or if no such application was made then independently. As I have said, in the present case the application under section 5 had been made and therefore there was nothing to be done under section 10 until the matter under section 5 was decided.

Mr. Hans Raj, acting as the Tribunal, on the 6th of March, 1953, made an order giving effect to the provisions of the Debts Adjustment Act in the following words—

> "An application by respondent No. 1 under section 5 of the Displaced Persons (Debts Adjustment) Act has been filed.

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To come up along with that application."

Thus it was clear to Mr. Hans Raj as to what was to be done. I find that there is a note in the index of this case to the following effect—

"Aainda digar misal pesh hoti rahe"

As a matter of fact the application made by Dhillu Singh is headed as an application under section 5 (2) of the Act and it was claimed in this that relief be given to the petitioner under Act LXX of 1951. This particular debt although not admitted was mentioned at No. 1. Therefore these two proceedings, one under section 10 and the other under section 11 (2) which is in the nature of an application under section 5, were supplementary proceedings and one arose out of the other, the only difference being that the latter application had to be decided in order to decide the application under section 10.

In my view the Tribunal could not dismiss the application and as he himself has pointed out it was a mistake on his part to have done so and it was certainly within the jurisdiction of a Tribunal when its attention was drawn to the fact to correct errors of this kind. That is the view which has been taken in several cases. It was held by Dalip Singh J. in *Kalu Ram* v. *Ghasita Ram* (1), by Tek Chand J, in *Dhanpat Rai* v. *Badri Das*, (2), in *Fateh Chand* v. *Mussummat Menghi Bai and others* (3), by the Calcutta High Court in *Adwaitanand Tirthaswami* v. *Basudeo Nand and others* (4) and by the Nagpur High Court in *Goverdhan*

(1) A.I.R. 1928 Lah. 534
(2) A.I.R. 1936 Lah. 759
(3) 109 P.R. 1913
(4) 6 I.C. 205

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Sahaya v. *Hemrajsingh Ratansingh* (1). The matter, in my opinion, is concluded by the judgment of the Federal Court in *Jamna Kuer* v. *Lal Bahadur and others* (2), where their Lordships laid down the following—

> "Whether the error occurred by reason of the counsel's mistake or it crept in by reason of an oversight on the part of the Court was not a circumstance which could affect the exercise of jurisdiction of the Court to review its decision. We have no doubt that the error was apparent on the face of the record and in our opinion the question as to how the error occurred is not relevant to this enquiry. A mere look at the trial Court's decision indicates the error apart from anything else."

It is quite clear that the order was made because of a mistake on the part of the Tribunal and he had jurisdiction to correct the error both under his powers of review and under its inherent jurisdiction. The principle *actus legis nemini est damnosus* has application to the facts of this case.

I would, therefore, dismiss this petition but leave the parties to bear their own costs throughout.