

(1877) 12 AHC CK 0004

Allahabad High Court

Case No: None

Husain Bakhsh

APPELLANT

Vs

A.D. Madge

RESPONDENT

Date of Decision: Dec. 7, 1877

Citation: (1875) ILR (All) 525

Hon'ble Judges: Spankie, J; Pearson, J

Bench: Division Bench

Judgement

Pearson, J.

The Judge apparently holds the present application, dated 5th April last, for the execution of the decree of the 20th February 1874 to be barred because no previous application of the nature described in Section 212, Act VIII of 1859, had been made. But such an application could not well be made to the Court which passed the decree, if the decree could not be executed within its jurisdiction. The only application which could usefully be made to the Lucknow Court was that which was made to it on the 28th May 1875. The remark that no application u/s 212 was made at the same time is of no weight or importance. The question is whether the application of the 28th May 1875 was not one to enforce or keep in force the decree within the scope and meaning of Article 167 Article 167: q.v. supra 1 All. 135, Schedule ii, Act IX of 1871. It is difficult to conceive any other object which the applicant can have had in view in making the application than the enforcement or keeping in force the decree. The idea of mala fides is preposterous. The application was a necessary and decided step towards the execution of the decree (see Indian Limitation Act, 1877, Schedule ii, Article 179) in the Allahabad district. Under these circumstances we cannot but regard it as an application within the terms of Article 167 aforesaid; and the present application being within three years from the date of that application is within time. The view we take of the nature of the application of 28th May 1875, is supported by a decision of a Bench of this Court, dated 22nd ult., in miscellaneous special appeal No. 64 of 1877, Banki, Behari, appellant v. Musammat Rahsi, respondent.

2. We reverse the, lower Appellate Court's order of 20th June last, and, decreeing the appeal with costs, direct that the application be allowed and proceeded with.