

(1922) 01 AHC CK 0039

Allahabad High Court

Case No: None

Sahu Bimal Prasad

APPELLANT

Vs

Muhammad Mubarak Husain
and Another

RESPONDENT

Date of Decision: Jan. 8, 1922

Citation: (1922) ILR (All) 274

Hon'ble Judges: Walsh, J; Piggott, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Piggott and Walsh, JJ.

The essential point raised by this appeal admits of being briefly stated. The court below had before it an application for execution of a decree with which, on a particular date, it found itself unable to proceed further by reason of the default of the decree-holder. Under Order XXI, Rule 57, the duty of the court was, either to dismiss the application, or to adjourn the proceedings to a future date. On a dismissal of the application it is provided by the said rule that the attachment shall cease. The court did not follow, as it ought to have done, the provisions of the said rule. The order which it passed was to the effect that the execution case should, for the time being, be dismissed, but that the attachment should remain in force. That is not an order which the court ought to have passed; but the question before us is as to the effect of the said order when passed. The decree-holder on a subsequent date applied to the court to take up the proceedings at the stage at which they stood on the date of the order above-mentioned; that is to say, he asked the court to proceed with the sale of the property in question without any fresh attachment. The judgment-debtors objected that a fresh attachment was necessary and that objection has been overruled by the court below; hence this appeal.

2. There is authority in support of the appellant's contention in the case of *Namuna Bibi v. Rosha Miah* ILR (1911) Cal. 482. We can only say that we do not agree with the

decision in that case and that the reasoning on which it is based does not commend itself to us, Moreover, that case is to a certain extent distinguishable from the present, for the execution court in the case now before us went out of its way to mark the nature of the order which it purported to pass by using the words "filhal," which we must render "for the present" or "for the time being." There can be no doubt as to the order which the court intended to pass and that order was submitted to by the parties. It was, in substance and effect, an order that the execution proceedings do stand adjourned sine die. It has, however, been contended before us that the principle laid down by the learned Judges of the Calcutta High Court in the case above referred to has been adopted and enforced by a Bench of this Court. The reference is to the case of Dildar Husain v. Sheo Narain ILR (1918) All. 157. We are of opinion that that case is distinguishable on the facts. To begin with, the question before the court in that case concerned the rights of a bond fide transferee for value. Secondly, there had been no qualifying expression used in the order of dismissal such as we find in the order laid before us in the present case. While, therefore, we desire to lay stress on the fact, already pointed out by us, that the order directing the execution case to be dismissed for the time being and the attachment maintained was not a proper order for the court to have passed, we are not prepared to treat it as a nullity and as having no effect upon the parties between whom it was passed. We think there is no force in this appeal and we dismiss it accordingly with costs.