

(1918) 06 CAL CK 0001**Calcutta High Court****Case No:** None

Bahuballav Roy

APPELLANT

Vs

Jogesh chandra Banerjee and
Others

RESPONDENT

Date of Decision: June 6, 1918**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 2

Citation: AIR 1919 Cal 181(2) : 50 Ind. Cas. 242**Hon'ble Judges:** Syed Shamsul Huda, J; Fletcher, J**Bench:** Division Bench**Judgement**

Fletcher, J.

This is an appeal by the decree holder against the decision of the learned District Judge of Bard wan, dated the 15th January 1917, affirming the decision of the Munsif of Katwa. On the 6th May 1910, a decree for money was passed by consent against the present applicant and another person. The amount decreed was the total amount claimed; but it was provided that, if the money was aid by instalments, the decree-holder would accept payment by the instalments mentioned. It was also provided that, in the event of default being mile in the payment of any of the instalments, the decree holder would be entitled to realize the whole amount. It is not found that any instalment had been paid. Therefore, the original part of the decree by which the suit was decreed for the amount claimed remained in force. The decree holder only agreed to accept payment by instalments if they were made as provided for by the decree; and, moreover, the decree expressly provided that, in default of one instalment, the decree holder would be entitled to recover the whole amount due. Now, the decree-holder, the present appellant, applied to execute the decree against the defendant No. 1. He apparently arrived at some sort of private arrangement with the defendant No. 2. The present application for execution was made in the year 1916. How is the decree-holder, the appellant, going to show that

the present application was made in time P He, first of all, relies on two uncertified payments which he states were made to him by the defendant No. 2. But Order XXI, Rule 2(3), Civil Procedure Code, expressly provides that an executing Court shall not recognize any payment that has not been certified. Then, the appellant, the decree-holder, states that he can certify the payments made at any time. That is quite true, subject, of course, to the ordinary rule of limitation that the certification must take place within such time as is required to save the case from being barred by limitation. He cannot postpone the certification for a long period of years and then say that he will save the decree from being barred by limitation by certifying the payment then. The point that is raised in this case really turns on whether the decree was saved from being barred by reason of these alleged uncertified payments. There is nothing to show that it was. That being so, the whole decretal amount having become due on the failure to pay the first instalment, the present application was barred by limitation. I agree with the result arrived at by the learned District Judge of the Court of Appeal below. The present appeal, therefore, fails and must be dismissed with costs, one gold mohur.

Huda, J.

2. I agree.