Abdul Ajij Abdulla Vs Yakub Abdul Gani

Court: Calcutta High Court

Date of Decision: April 2, 1919

Acts Referred: Limitation Act, 1963 â€" Article 182(5)

Citation: 54 Ind. Cas. 433

Hon'ble Judges: Walmsley, J; Charles Chitty, J

Bench: Division Bench

Judgement

Charles Chitty, J.
This is an appeal by the judgment-debtor, and the only point for our determination is whether the decree holder"s right

to execute his decree is barred by limitation.

2. On 5th December 1910 the decree was passed by the Chief Court of Lower Burma for a sum of Rs. 5,000 and odd.

3. On 17th March 1913 that Court ordered notice to issue to the judgment-debtor under Order XXI, Rule 22.

4. The notice was sent to Chittagong for service but was not served for want of an identifier.

5. On 23rd December 1913 the decree-holder applied to execute the decree but withdrew that application on 5th January 1914.

6. On 9th August 1915 he made a third application, on 29th September 1915 a fourth, and on 12th January 1916 the fifth and present application.

7. Of these notice of the last only was served on the judgment-debtor, who now comes in and pleads limitation.

8. The question is whether the application of 17th March 1913 saves limitation. It is argued for the appellant that it was not an application for

execution, and that, if it can be so regarded, it was not ""in accordance with law."" The application was headed as for execution ""and was written in

the tabular form prescribed by the Code for such an application. In stating"" the mode in which the assistance of the Court was required ""in column

10 it said ""by notice to the defendant through the District Court of Chittagong to show cause, if any, why the decree should not be executed against

him by arrest and imprisonment of his person or by attachment and sale of his movable and immovable properties"".

9. I am disposed to think that it was an application for execution, though possibly loosely expressed. Although with regard to the attachment of

property no particulars were given, it was explicit enough as to execution by arrest and imprisonment of the judgment debtor. But it is not

necessary to rest our decision on that ground, as the application was clearly to take a step-in-aid of execution. This was decided by a Bench of this

Court in Gopal Chunder Manna v. Gosain Das Kalay 25 C. 594 : 2 C.W.N. 556. There was a reference to a Full Bench in that case, but on

another point which does not here arise. It was suggested that the change in the wording of Section 248 of the Code of Civil Procedure, 1882,

which was made on its reenactment as Order XXI, Rule 22 would make that decision inapplicable to the present case. It is true that there has been

a slight change, and the rule now begins where an application for execution is made,"" etc But while the rule prescribes that in certain oases a notice

shall issue, it does not forbid the issue of such a notice in oases where it is necessary but where no application for execution has in fact been made.

It cannot, therefore, be said that the application for such a notice was not an application in accordance with law. The case thus falls both under

Clause 5 and also under Clause 6 of Article 182 of Schedule I to the Limitation Act. In this view of the case the decree-holder''s present

application is within time, and the appeal must be dismissed with costs. Hearing-fee 5 gold mohurs.

Walmsley, J.

10. I agree that this appeal should be dismissed. The view I take is that expressed by my learned brother in the first part of his judgment, namely,

that- the application for execution filed on March 17th, 1913, was of such a nature as to save the decree from being barred by limitation. Beyond

that it is unnecessary to go for the purpose of this appeal, and I wish to refrain from expressing an opinion upon the question whether a decree-

holder can keep his decree alive by asking for a notice to be issued under Order XXI, Rule 22, without , presenting an application containing the

details required by Rule 11.