

(1873) 02 CAL CK 0001

Calcutta High Court

Case No: Miscellaneous Special Appeal No. 316 of 1872

Mussummat Bibee
Luteefun and Another

APPELLANT

Vs

Rajroop Singh

RESPONDENT

Date of Decision: Feb. 21, 1873

Judgement

Phear, J.

The question now is whether the application for execution made in June 1871 is or is not barred by the operation of s. 20, Act XIV of 1859. The words of that section are:-- "No process of execution shall issue from any Court not established by Royal Charter to enforce any judgment, decree, or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree, or order, or to keep the same in force within three years next proceeding the application for such execution." Now it seems to me impossible to construe the various applications for review, which were made to this Court, as proceedings to enforce the judgment of 1862, or any of the proceeding judgments, or in the alternative, to keep the same in force. The object of those applications was distinctly to alter the judgment which had been obtained, and to procure a new judgment or decree to be passed. It appears to me that we cannot, in common sense, say that an endeavour to obtain a new and a more favorable judgment is a proceeding taken to enforce or to keep alive the judgment which it is thus desired to supersede.

2. The Full Bench decision in Bipro Doss Gossaih v. Chunder Seekur Bhattacharjee Case No. 583 of 1866, 31st May 1867 has been appealed to by the respondent. But I see nothing in that decision which tends in any way to support the respondent's case. There the Full Bench decided that appearance by a decree-holder at the hearing of the application for review in order to oppose that application, and to sustain the decree which he had got, was a proceeding taken for the purpose of keeping his decree in force. It seems to me plain enough that it was so. In this instance it is the decree-holder himself, who is making the application for review, and was using his best endeavours to get the original decree set aside, and a new one made. I may add that one, at any rate, of the

applications for review was rejected so far back as 1866; and in the application which was made subsequently to that date, no sort of attempt appears to have been made by the applicant to show good cause for being out of time. That fact alone would go very far in my opinion to show that these various applications were not bona fide proceedings on the part of the applicant. But however this may be, for the reasons I have already given, I think that the view which was taken by the Munsif in this case was correct, and that the Judge was, wrong in considering that the applications for review ought to be treated as proceedings falling under s. 20 taken for the purpose of keeping the decree alive. I think the execution of the decree is barred by lapse of time. The order of the Judge for issuing execution must be reversed with costs.