

(1869) 02 CAL CK 0006

Calcutta High Court

Case No: Miscellaneous Special Appeal No. 496 of 1868

Golam Ashgar

APPELLANT

Vs

Lakhimani Debi and Others

RESPONDENT

Date of Decision: Feb. 4, 1869

Judgement

Loch, J.

In this case there appears to have been an application of the 13th February 1862 for execution of decree. It was struck off on the 31st January 1863. It also appears that there was another application of the 13th April 1863, upon which nothing seems to have been done, but simply an order passed upon it, to the effect that the record be sent for. A further application was made on the 9th August 1865; and on this occasion certain property was attached by the decree-holder. It is urged by the appellant before us that, as nothing was done under the applications of February 1862 and April 1863, the proceedings taken on the 9th August 1865 were out of time, and the execution was, therefore, barred by limitation. The Judge was wrong in having refused to enter into this point. This Court, in a Full Bench Ruling, Bisweswar Mullick v. The Maharaja of Burdwan (Case No. 436 of 1867; 19th March 1868) has held that, where an execution is once barred by limitation, no subsequent application made within three years of a previous application, upon which something was done, is sufficient to revive the decree. We think the Lower Courts ought to have taken this matter into consideration; and we therefore remand this case to the first Court to determine whether the applications made in February 1862 and April 1863 were bond fide proceedings, and sufficient to keep the decree alive.

2. Costs will abide the final result of the case.