(1867) 05 CAL CK 0004

Calcutta High Court

Case No: Miscellaneous Appeal No. 583 of 1866

Bipro Doss Gossain and Others		APPELLANT
	Vs	
Chunder Seekur Bhuttacharjee		RESPONDENT

Date of Decision: May 31, 1867

Judgement

Sir Barnes Peacock, Kt., C.J.

We think that the words "any judgment decree, or order" used in s. 20, Act XIV of 1859, must mean a judgment, decree, or order, which the person in whose favor it is given is at liberty to enforce by execution, and that it would not be less a judgment, decree, or order of this Court, because an application to review it, or a petition of appeal against it, had been preferred by the opposite party. If, in the case of an appeal, a new judgment of affirmance of the former decree should be given, then a new judgment would have to be executed, and the period for applying for execution would commence from the time of the new judgment of affirmance. But if the appeal were dismissed for default, there would be no new judgment, and the judgment of the lower Court would be the judgment to be enforced. The next question is, whether the words "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 preceding the application for such execution," would include an opposition by the person in whose favor the judgment had been given to an application for review, or to a petition of appeal.

2. We think that a mere application for a review, or a petition of appeal, by the person against whom the judgment was given, would not be an act done by the person in whose favor the judgment was given for the purpose of keeping the same in force. It would be an act done by the opposite party to destroy it, and not done by the person in whose favor it was given to keep it in force. But if, upon the application for review, or the petition of appeal, the person in whose favor the original decree was given appears in person, or by vakeel, whether voluntarily or upon service of notice, to oppose the application and files a vakalatnama or does any thing for the purpose of preventing the Appellate Court, or the Court of Review,

from setting the judgment aside, we think that, within the fair interpretation of the words, such act, being an act of the person in whose favor the judgment has been given for the purpose of preventing it from being set aside, is an act done for the purpose of keeping the judgment in force. If the party is successful in preventing the judgment from being set aside, and does in fact keep the judgment in force and afterwards applies to execute it, his application is in time if made within three years from the time of the last not which he did to keep the judgment in force or to prevent it from being set aside. With this expression of opinion the case will be remitted to the Court which referred the questions for our consideration in order that they may finally deal with the case upon its merits. It does not appear whether the party, in whose favor the judgment was originally given, did oppose the review or not; besides there are other facts in the case which must be considered by the Court which referred it.

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[1] Act IX of 1871, Sched. II, No. 167.