
(1870) 03 CAL CK 0010

Calcutta High Court

Case No: None

Grish Chandra Roy

APPELLANT

Vs

Prasanna Kumar China

RESPONDENT

Date of Decision: March 9, 1870

Judgement

Norman, J.

In execution of a decree of the Calcutta Court of Small Causes in favor of Grish Chandra Roy against Prasanna Kumar China, a sum of 227 rupees in cash was seized on the 22nd of November last. On the 25th of November, the defendant Prasanna Kumar China was declared an insolvent, and by a vesting order of the same date, his estate was transferred to the Official Assignee. On the 30th of November, the bailiff of the Court of Small Causes paid into that Court to the credit of the execution creditor in the cause of Grish Chandra Roy v. Prasanna Kumar China the 227 rupees. The question is whether the Official Assignee is entitled, under the vesting order of the 25th November, to this sum of 227 rupees against the execution-creditor. The question turns upon sections 58, 69, and 70 of Act IX of 1850. By section 58, the writ of execution is to issue to one of the bailiffs of the Court, which is to be his warrant to levy, or cause to be levied, the sum of money mentioned in the warrant, and also the costs of the execution. By section 69, every bailiff executing any process of execution against the goods of any person may seize money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money belonging to the person against whom execution issues." Section 70 provides, that "the bailiff shall forthwith deliver any cheques, "bills of exchange, promissory notes, bonds, specialties or other securities for money, which shall have been so seized or taken as aforesaid, to the clerk or other person appointed by the Judges to receive the same, who "shall hold them as a security or securities for the amount directed to be levied by such execution," and the plaintiff is empowered to "sue in the "name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured, or made payable thereby, when the time of payment thereof shall have arrived." Now, as regards money or bank notes there is no provision whatever in section 70; that the bailiff

is to deliver money, that is, coin or bank notes, to the clerk under that section. The Judges of the Small Cause Court, speaking, as I understand, as to what is the practice of the Court, say that, as regards cash, "upon the seizure the cash might at once have been handed over to the execution-creditor." We think that such practice would be in accordance with the provisions of sections 69 and 70, and it can only proceed upon the supposition that the levy, as far as the cash or bank notes is concerned, is complete by the seizure; that money seized in execution at once becomes the property of the judgment-creditor, or at least so much of it as is sufficient to satisfy the decree.

2. Mr. Ingram, who appeared on behalf of the Official Assignee, referred to the form of the warrant of execution against the goods of a defendant, which is set out at page 260 of Temple's Practice of the Calcutta Court of Small Causes. Now that warrant authorizes the bailiff to seize and take money or bank notes, &c., and without any direction that the money is to be brought into the Court, simply states "and what you shall do therein make known to the said Court." This warrant thus leaves the bailiff to be guided by the directions contained in the Act as to what he is to do with the bills of exchange and other securities mentioned in the warrant. There are no directions whatever as to what he is to do with money.

3. Under these circumstances, we are of opinion that the judgment of the Court of Small Causes that, as regards money, the execution is complete by the seizure, and that, therefore, the Official Assignee is not entitled to the money seized in execution of the decree of the Court of Small Causes against Prasanna Kumar China before his insolvency, is correct. There will be no costs, as no one appears for the creditor.

Markby, J.

I am the same opinion