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**(1954) 08 CAL CK 0034**

**Calcutta High Court**

**Case No:** Appeal from Original Order No. 6 of 1954

Satya Narayan Banerjee

APPELLANT

Vs

Karnadhar Das

RESPONDENT

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**Date of Decision:** Aug. 24, 1954

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 47

**Citation:** (1956) 2 ILR (Cal) 268

**Hon'ble Judges:** Debabrata Mooherji, J; Das Gupta, J

**Bench:** Division Bench

**Advocate:** Apurbadhan Mukherjee and Sachindra Chandra Das Gupta, for the Appellant; Nalin Chandra Banerjee, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Das Gupta, J.

The decree in connection with the execution of which the present litigation has arisen was passed on December 15, 1939, by this High Court on its Original Side. An application for execution was filed in the fifth court of the Subordinate Judge, 24:Pargands, on November 4, 1951. After some applications of objection u/s 47 of the CPC proved unsuccessful an order attaching the properties mentioned in the schedule to the application for execution was passed on November 13, 1952. On November 11, 1953 after another application u/s 47 of the CPC had been filed and dismissed for default the judgment-debtors filed an application purporting to be u/s 35 of the Bengal Money-Lenders Act, in which they prayed that the court should, in accordance with the provisions of Section 35 of the Bengal Money-Lenders Act, specify so much of the property as it considers saleable at a price sufficient to satisfy the decree. The learned Subordinate Judge ordered this application to be registered and fixed December 5, 1953, for filing objection by the opposite party. On the same date an application was filed by the judgment-debtors praying that further proceedings in execution case should be stayed till the application u/s 35 had been

disposed of. The learned Judge ordered that the sale would not be stayed but would be held but its confirmation would be stayed till the disposal of the judgment-debtors' application u/s 35 of the Bengal Money-Lenders Act. Quite clearly the learned Judge wholly misconceived the position. It was his own duty to follow the provisions of Section 35 of the Bengal Money-Lenders Act, even though neither party had drawn his attention to it by any application. When such an application was filed it was his bounden duty to pass a proper order thereupon as early as possible. There could be no objection to his giving time to the other party to file objection to the application but it is impossible to understand his view that the sale would be held in spite of the judgment-debtors' application u/s 35 without the provisions thereof being followed. Such a curious view has only to be stated to be rejected.

2. We, therefore, allow the appeal, set aside the order passed by the learned Subordinate Judge and direct that he should follow the procedure in accordance with law-including the provisions of Section 35 of the Bengal Money-Lenders Act-after taking into consideration the application filed in this behalf by the judgment-debtors. There will be no order as to costs.

Debabrata Mookerjee, J.

3. I agree.