

58 CWN 787

Calcutta High Court

Case No: Appeal from Original Order No. 227 of 1952

Satyendra Chandra
Ghosh Mullick

APPELLANT

Vs

Chandi Prosad
Mukherjee

RESPONDENT

Date of Decision: June 1, 1954

Acts Referred:

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

Citation: 58 CWN 787

Hon'ble Judges: Mitter, J; Lahiri, J

Bench: Division Bench

Advocate: Jitendra Kumar Sen Gupta, Sourindra Narayan Ghosh and Sivakali Bagchi, for the Appellant; N.C. Sen Gupta and Nagendra Nath Bose, for the Respondent

Final Decision: Dismissed

Judgement

Mitter, J.

This is an appeal from an order of the learned Subordinate Judge, 2nd Court, Alipore, dated May 13, 1952, in Miscellaneous Execution Case No. 29 of 1951. By the said order the learned Subordinate Judge overruled the appellant's objection to the maintainability of the execution case. On or about April 4, 1939, the respondent instituted against the appellant a suit on the Original Side of this Court for the recovery of Rs. 6,035. On July 12, 1939, while the said suit was pending, the Court of Wards assumed charge of the appellant's estate which was in the district of Noakhali. Two days later, i.e., on July 14, 1939, the said suit was decreed ex parte for Rs. 6,115 with 6 per cent interest on judgment. On July 24, 1939, the Court of Wards issued a notice u/s 10A of the Court of Wards Act, 1879, calling upon all creditors having claims against the; ward or his immovable property to submit their claims within six months from the date of the publication of the said notice. On August 1, 1939, the; said notice was published in the Calcutta Gazette and in certain newspapers. It is common case that the respondent did

not prefer any claim in respect of the said decree. On March 30, 1949, the appellant's estate was released by the Court of Wards. Thereafter, the said High Court decree was transferred to the 2nd Court of the Subordinate Judge at Alipore. On July 7, 1951, the respondent started execution proceedings in the said Court to recover the decretal amount together with interest and costs, aggregating Rs. 10,559-11. The appellant by an objection u/s 47 of the CPC contended, inter alia, that the execution proceedings were not maintainable, inasmuch as the decree-holder had not preferred any claim pursuant to the notice u/s 10A of the Court of Wards Act.

2. Although, according to the learned Subordinate Judge, no other point was pressed, he proceeded to decide whether section 10C was a bar to the said execution proceedings and held, on the authority of the decision in *Anath Nath Bose, Rai v. Srish Chandra Nandy, Maharaja* (1) (45 C.W.N. 617), that the provisions of section IOC did not apply to a decree of the High Court. He held further, purporting to rely upon the said decision, that the judgment-creditor was entitled to claim interest as decreed by the High Court. Before us, both parties are agreed that section IOC has no application to the case even though by the amendment in 1941 of section 3 of the Court of Wards Act, 1879, "Civil Court" included the High Court in Calcutta in the exercise of its Ordinary and Extraordinary Original Civil Jurisdiction or its Civil Appellate or Revisional Jurisdiction. (See Bengal Act, IX of 1941.) It is common case that at the date of the execution concerned no property belonging to the appellant was, or has since been, in charge of the Court of Wards. In terms, therefore, the provisions of section IOC have no application to the case. Section IOC provides that where any property is in charge of the Court of Wards, no Civil Court shall execute any decree or order against the person or property of the ward, etc.

3. The real point to be decided in the case is whether section 10A is applicable to the facts of this case.

4. Mr. Jiten Sen Gupta on behalf of the appellant has frankly conceded that his client is unable to resist any execution in respect of the amount originally decreed, but has contended a substantial part of the respondent's claim to interest is barred by sub-section (2) of section 10A. He has argued that "creditors" in sub-section (1) of section 10A include judgment-creditors as well and that a "claim" within the meaning of sub-sections (1) and (2) includes a claim under a decree. He has consequently argued that the respondent's claim, not having been submitted to the Court of Wards in compliance with the provisions of subsection (1), ceased to carry interest from the date of the expiry of the period for submission of the claim. Dr Sen Gupta on behalf of the respondent baa argued that "creditors" within the meaning of section 10A do not include judgment creditors and that a "claim" within the meaning of the said section was not a claim in respect of a decree obtained before the Court of Wards assumed charge. According to Dr. Sen Gupta, "any decree" mentioned in sub-section (s) refers to a decree that might be passed in a suit mentioned in the proviso to sub-section (1). Mr. Jiten Sen Gupta invited our attention to the fact that the proviso to subsection (1) was added by section 3(1) (a) of the Bengal Court of Wards (Amendment) Act, 1935 (Bengal Act, VI of 1936). It is clear, therefore,

that sub-section (2) is older than the proviso to sub-section (1) of section 10A and that, therefore, the words "notwithstanding any law, contract, decree or award to the contrary" in sub-section (2) indicate that claims under sub-section (1) of section 10A include a claim in respect of a decree as well. It follows that section 10A contemplates the submission to the Court of Wards of all claims, including a claim in respect of a decree already obtained. This interpretation of section 10A touches the question of interest only. It does not, however, follow that the decretal amount should not carry any interest after the Court of Wards has released the property. In our view, the provisions of section 10A are applicable while the Court of Wards continues to be in charge of the ward's property. Once the property is released, the Act ceases to apply, and from that moment interest upon the decretal amount begins to run again. In this case, therefore, although the decretal amount of Rs. 6.115 ceased to carry any interest from the expiry of six months from the date of the publication of the notice u/s 10-A the decretal amount began to carry-interest again from the time the estate was released by the Court of Wards, that is, from March 30, 1949. Such interest must, therefore, be payable from the last mentioned date until realisation.

5. As to our decision that the provisions of section 10A are applicable only so long as the Court of Wards is in charge of the person or property of a ward, it is interesting to note that by sub-section (5) of section 10A as inserted for Eastern Bengal by the Eastern Bengal and Assam Court of Wards (Amendment) Act, 1907, a claim, other than a claim on the part of Government, not entered in the schedule framed under the preceding sub-section, was, in certain circumstances, deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged. There is no such provision in the present Act, and it is obvious that in the absence of apt words, the provisions of the present section 10A can have no application to a case where the property is no longer in charge of the Court of Wards.

6. The controversy as to whether the words "Civil Court" included the High Court in Calcutta was set at rest as a result of the amendment of the Court of Wards Act, 1879, by the Bengal Court of Wards (Amendment) Act, 1941 (Bengal Act, IX of 1941). This point is not material, as section 10C in terms has no application to the case. The provision in the Court of Wards Act that in the absence of a claim being submitted within the time prescribed by section 10A a creditor's claim should cease to carry interest does not appear to us to affect any jurisdiction of the High Court.

7. It cannot be doubted that at the material time Part VII of the Court of Wards Act had no application to suits instituted or pending in the High Court. True, section 56 was repealed by section 3 of Bengal Act IX of 1941, but then the respondent's suit was instituted and a decree obtained as far back as 1939. In our view, at the date of the execution concerned no suit against the ward was pending to make it incumbent upon the respondent to implead the Court of Wards. In view of our decision that the respondent is not entitled to the whole of his claim on account of interest, this appeal partly succeeds. We order that the respondent is not entitled to any interest on the decretal amount from 1. 2. 40, i.e.,

after the expiry of six months from the date of publication of the notice u/s 10A up to 30.

3. 49 when the estate of the appellant was released by the Court of Wards. In view of the facts of this case, the appellant is not entitled to the costs of this appeal, and accordingly we make no order as to costs.

Lahiri, J.

I agree.