

(1921) 07 CAL CK 0030

Calcutta High Court

Case No: Appeal from Order No. 325 of 1920

Barada Kishore
Acharjya Choudhury

APPELLANT

Vs

Jagat Chandra Das

RESPONDENT

Date of Decision: July 18, 1921

Judgement

1. This appeal arises out of proceedings in execution of a decree for rent. The decree was obtained on the 20th April 1916. The application for execution was made on the 15th April 1919, but it was dismissed for default in paying talbanna on the 4th June 1919. Fresh application for execution was made on the 19th September 1919. Objection was raised by the judgment-debtor on the ground of limitation on the 20th December 1919. On the 17th January 1920, the decree-holder filed an application for review of the order dated 4th June 1919. The Court of first instance granted the application for review of judgment and accordingly directed the execution of the decree to proceed. On appeal by the judgment-debtor, the lower Appellate Court set aside the order of the Court of first instance granting the review and restoring the execution case.

2. A second appeal has been preferred to this Court.

3. The order passed by the lower Appellate Court on appeal against the order of the Court of first instance granting a review is final u/s 104, sub section 2, of the CPC and there is no second appeal to this Court.

4. It is contended, however, on behalf of the appellant that an application was originally made u/s 47 of the Code and the order was made not only for granting the application for review but also for allowing the execution to proceed and that, therefore, a second appeal lies u/s 47. But if the application for review was not granted and the order of the 4th June 1919 dismissing the first application for default stands, the present application for execution is undoubtedly barred by the special limitation contained in Article 6, Schedule III of the Bengal Tenancy Act. It is only when the application for review is granted, that the decree-holder can get a

fresh start for execution. As stated above, it was granted by the Court of first instance, but the order was set aside by the lower Appellate Court and there is no further appeal to this Court.

5. The appeal must accordingly be dismissed with costs--one gold mohur.