

(1870) 05 CAL CK 0007

Calcutta High Court

Case No: Miscellaneous Special Appeal No. 468 of 1869

Bacharam Hazra

APPELLANT

Vs

Maharaja Dhiraj
Mahtab Chand Roy
BahadurRESPONDENT

Date of Decision: May 11, 1870

Judgement

Sir Richard Couch, Kt., C.J.

Before we can hold that this order comes within the meaning of section 22, and that the party has only a year to enforce it, we must be satisfied that it is clearly within the meaning of the word "summary." Now it is very difficult to say what is meant by this word or to give a definition which would be applicable in all cases. There are instances in which a proceeding is undoubtedly a summary one. A suit for dispossession within six months is a summary proceeding, that is a summary decision not to be questioned by an appeal; but the matter of which may afterwards be contested by a regular suit. That shows the nature of a summary proceeding. It is the decision of a Court which hears and determines the matter, but does not finally conclude the parties, a proceeding in which the Court makes an order and determines the matter in issue, if I may so describe it, for the present occasion, in order to prevent some mischief which might ensue, if there was not a mode of coming to some decision at once in the matter. It may also be that by a summary proceeding is meant one where no appeal lies, and where the decision of the tribunal which hears and determines the matter is final. I think the present is a case in which it is impossible to say that the proceeding is a summary one within the meaning of section 22; it is an order made by a Court in the exercise of its jurisdiction in the execution of the decree in a suit,--an order by which the execution-debtor was declared entitled not to have the decree executed against him because it was barred by the Law of Limitation, and having succeeded in that he was awarded his costs. I think that cannot be considered as a summary decision or award within the meaning of section 22. It is an order within the meaning of section 20. It does not appear to me when the cases come to be examined that there is any real conflict of decision between them. I think the two

decisions in *Puresh Narain v. J. Dalrymple* 9 W.R., 458 and *Mohan Lal Sukul v. Srimati Ulfutunnissa* See Ante., p. 164, are correct, and that we should adopt them. The appeal will be dismissed with costs.

¹ Act XIV of 1859, sec. 22.--"No process of execution shall issue to enforce any summary decision or award of any of the Civil Courts not established by Royal Charter, unless some proceeding shall have been taken to enforce such decision or award, or to keep the same in force within one year next preceding the application for such execution."

² Before Mr. Justice Bayley and Mr. Justice Hobhouse.

Mohan Lal Sukul (Judgment-Debtor) v. Srimati Ulfutunnissa (decree-holder).
Miscellaneous Special Appeal, No. 498 of 1868

The 5th February 1869.

Mr. R.T. Allan and Baboo Akhil Chandra Sen for appellant.

Baboo Kali Mohan Dass for respondent.

Bayley, J.--This is a special appeal from an order of the lower Appellate Court, holding that section 22, Act XIV of 1859, does not bar the application for execution of the decree which in this case was one for costs.

The facts are that the purchaser of the original decree applied in execution to make one Hashmat Ali, the representative of Hyder Ali, as the son and heir of the latter.

It was held by this Court, on the 19th April 1865, affirming the decree of the lower Appellate Court, dated 16th September 1864, that Hashmat Ali did not inherit the property of Hyder Ali, and so was not the heir, and, consequently, not the representative of the judgment-debtor for the purposes of satisfying the petitioner's decree.

In special appeal it is urged that the lower Appellate Court was wrong in stating that Hashmat Ali is not barred by section 22 of Act XIV of 1859, and in considering that the decision of the High Court in *Puresh Narain Roy v. J. Dalrymple* 9 W.R., 458 applies to this case. The words of that case are:

We think that the order for costs made upon a contested matter in execution of a decree is not of the nature of a summary decision or award, as described in that section, but that it cornea within the word "order," contained in section 20, the order being made by the Court in the course of executing a decree made in a regular suit.

I think this is a correct construction of the law, and that the proceedings in execution in the present instance were of the character of those ordinarily taken in the progress of a suit towards final decision.

The appeal is, therefore, dismissed with costs.

Hobhouse, J.--The applicant in this case was a decree-holder in the year 1833.

In the course of the execution of the decree he applied to enforce it, in accordance, I presume, with the procedure laid down in section 216 of the CPC against Hashmat Ali as the representative of the judgment-debtor Hyder Ali.

On the 16th September 1864, the Judge, in appeal, held that Hashmat was not the representative of Hyder Ali, and gave the said Hashmat Ali costs of the proceeding.

This judgment was upheld in appeal by the High Court on the 19th April 1865, and costs of that Court were also awarded to Hashmat.

On the 30th January 1867 Ulfatunnissa, the representative of Hashmat and the respondent in this Court, applied to execute the orders for costs of the 16th September 1864 and the 19th April 1865.

The order of the High Court of date the 19th April 1865 is an order passed by a Court established by Royal Charter, and the provisions of section 22, Act XIV of 1859, do not, therefore, apply to such an order, and it is admittedly therefore still in force.

The order of the Judge, dated the 16th September 1864, is an order of a Civil Court not established by Royal Charter, and it is contended for the special appellant that the order is in the nature of "the summary decision or award" contemplated in section 22, Act XIV of 1859, and that therefore the respondent, not having sued out execution within one year from the 19th April 1865, limitation now bars the execution for the costs given by that order.

The application for execution in this case, I should mention, was of date the 30th January 1867. I agree with Mr. Justice Bayley that the order of the Judge, of date the 16th September 1864, cannot be said to be in the nature of a summary decision or award, such as for example, an order under Act XIV of 1841, against which an appeal lies in a regular suit in a Civil Court. It is in the nature of an order of a Civil Court having final jurisdiction--a jurisdiction given expressly by the provisions of section 216 of the Code of Civil Procedure. The case of Puresh Narain Roy v. J. Dalrymple 9 W.R., 458 in which I was one of the Judges, is in point, and governs this view of the case, I agree therefore, in dismissing the appeal with costs.