

(1869) 02 CAL CK 0020

Calcutta High Court

Case No: Miscellaneous Special Appeal No. 503 of 1868

Ramdhan Mandal

APPELLANT

Vs

Rameswar Bhattacharjee

RESPONDENT

Date of Decision: Feb. 13, 1869

Judgement

L.S. Jackson, J.

I think the decision of the lower Appellate Court is right. This was an application to enforce a summary decision or award of a Civil Court not established by Royal Charter. It came within Section 22,¹ Act XIV of 1859. The special appellant's pleader contends that the present order, which was an order to pay costs relating to a petition to set aside the decree on the ground of fraud, such petition having been disallowed, does not come within the words "summary decision or order," and that the words "summary decision" mean a decision which is open to be contested by regular suit. I am not aware of any authority for that construction of the words "summary decision." As I understand the words "summary decision or award," they mean a decision of the Civil Courts not being a decree made in a regular suit or appeal. The petitioner, therefore, was bound to apply for the enforcement of this decision within one year from the time it was made. He seems to have thought that he had brought himself within time by paying into Court the money which he ought to have paid immediately on the making of the order, and then applied to recover it from the opposite party. It seems to me he ought to have paid the money at once; and that by his omission to pay within the year, he put himself out of Court, and debarred himself from proceeding to recover it from the opposite party.

Markby, J.

2. I am of the same opinion. I don't find any definition of the words "summary decision" that are used in Section 23, Act XIV of 1859,² and I should have doubted whether the meaning of these words is sufficiently well known to justify the use of them as a technical term in an Act of the Legislature without any definition. But on comparing Section 23 with Section 20,³ I think the construction put upon them by

Mr. Justice Jackson must be the right one.

3. As suggested to me now by Mr. Justice Jackson if that were not so, there would be a large number of cases for which no limitation whatever is provided.

L.S. Jackson, J.

The order of the lower Appellate Court is affirmed with costs.

1

Time for execution of a summary award of Civil Court or Revenue authority	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, or of any Revenue Authority, 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.
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2

Proceeding section not to apply to summary awards in force at the passing of this Act.	Sec. 23:--Nothing in the preceding section shall apply to any summary decision or award in force at the time of the passing of this Act, but process of execution may be issued either within the time now limited by law for issuing process of execution thereon or within two years next after the passing of this Act, <u>whichever shall first expire.</u>
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3

Time for enforcing execution of judgment, &c., of a Civil Court not established by Royal Charter.	Sec. 20:--No process of execution shall issue from any Court not established by Royal Charter to enforce any judgment, decree, or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree, or order, or to keep the same in force, within three years not preceding the application for such execution.
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