

(1880) 06 CAL CK 0022

Calcutta High Court

Case No: None

Hurro Pershad Roy
Chowdhry

APPELLANT

Vs

Bhupendro Narain
Dutt and Others

RESPONDENT

Date of Decision: June 23, 1880

Citation: (1881) ILR (Cal) 201

Hon'ble Judges: White, J; Field, J

Bench: Division Bench

Judgement

White, J.

This is an appeal against an order of the Subordinate Judge of the 24-Pargannas, dated the 13th of October 1879.

2. It appears that the High Courts, on the 4th of August 1876, upon the application of Hurro Pershad Roy Chowdhry for leave to lodge an appeal in the Privy Council, dismissed the application, and directed him to pay to the respondents before us Rs. 50 as costs. But the order was silent as to the Court which should compel the payment of the costs, in case Hurro Pershad would not pay them.

3. The respondents, when the costs were not paid, applied for the execution of the order to the Court of the Subordinate Judge of the 24-Pargannas. The suit had been originally instituted in that Court, but had been called up by the District Judge for trial in his own Court; and this was therefore the Court which passed the decree.

4. Two objections were taken before the Subordinate Judge, which have been renewed before us on this appeal. The first is, that the execution of the order was barred.

5. We are of opinion that the lower Court, has dealt properly with the objection. The period of limitation applicable to the execution of the order is three years from its date. It clearly falls under art. 167 of the Limitation Act, which prescribes the period

for the execution of "an order of any Civil Court not provided for by Article 169." Article 169 relates to the execution of orders on the Original Side of the High Court, and is therefore out of the question.

6. The second objection is, that the Subordinate Judge had no jurisdiction to execute the order.

7. The Subordinate Judge considers that he has jurisdiction u/s 649 of the Code, which provides, amongst other things, that "where the Court which passed the decree has ceased to exist or to have jurisdiction to execute it," the decree may be executed by "a Court which would have jurisdiction to try the suit in which the decree was passed." The Subordinate Judge considers that the section applies to orders as well as decrees, and treats the High Court as a Court which had either ceased to exist or to have jurisdiction to execute the order.

8. Whether the section applies to an order like the one before us, it is not necessary to decide now, for it is clear that the High Court does not fall within the description of a Court which has either ceased to exist, or ceased to have jurisdiction to execute its own order. It is true that the High Court, on its Appellate Side, does not, as a general rule, execute its own decrees or orders, but directs them to be executed by one or other of the Mofussil Courts subordinate to its jurisdiction. But this circumstance does not affect the vitality of its jurisdiction any more than it affects the fact of its actual existence.

9. The decision, therefore, of the Subordinate Judge, which proceeds on the applicability of Section 649 to the case before him, is, in our opinion, erroneous.

10. That being so, and there being no other section in the Code under which the order of the Subordinate Judge can be upheld, we must allow this appeal and set aside the order with costs.