
(1878) 06 CAL CK 0032

Calcutta High Court

Case No: None

Hurronath Bhunjo

APPELLANT

Vs

Chunni Lall Ghose

RESPONDENT

Date of Decision: June 24, 1878

Citation: (1879) ILR (Cal) 877

Hon'ble Judges: Prinsep, J; Markby, J

Bench: Division Bench

Judgement

Markby, J.

I think that there is no ground upon which we can say in special appeal that the judgment of the lower Appellate Court was wrong. The decree is dated the 18th July 1864. By some reason or other the decree was kept in force until the year 1873, when the defendant was arrested. He applied for his discharge u/s 273 of Act VIII of 1859; and upon that application an arrangement was come to that he should not be sent to jail provided that he would undertake to pay the sum of 10 rupees a month towards the liquidation of the decree. That arrangement having been come to, execution proceedings were struck off in September 1873. The judgment-debtor paid 10 rupees a month as agreed upon up to October 1876. Subsequently, on the 21st June 1877, an application was made by the decree-holder to execute the decree of the 18th July 1864 by arrest.

2. The District Judge of the 24-Pargannas has held that that application must be refused, on the ground that by the law of limitation applicable to this case, execution of the decree dated the 18th July 1864 is barred. The District Judge has entered into a question whether the arrangement made in 1873 was a substitution of a new arrangement between the parties for the old decree. It appears to me that no question of that kind arises in this case, because the decree-holder is not now seeking to enforce by means of execution the new arrangement; but he is seeking to enforce his old decree. We must, therefore, see whether execution of the old decree, dated the 18th July 1864, is barred. Article 167, Schedule II of the Limitation

Act (IX of 1871), provides, so far as it applies to this case, that an application for execution shall be made within three years from the date of the decree, or of issuing notice u/s 216 of Act VIII of 1859, or from the last application to enforce, or to keep in force, the decree. Now, the last application to enforce the decree was made on the 25th January 1873, and this present application was made on the 21st. June 1877. Prima facie, therefore, this application is too late. But the decree-holder contends that this is really not a new application for execution at all; that the proceedings, although struck off the file, were really only in suspense; and that he has a right to treat this present application as a continuation of the old proceedings, upon the same principle as that on which the case of Pyaroo Tuhobildarinee v. Syud Nazir Hossein (23 W.R.183) was decided. I quite admit that the mere striking off the case from the file is not conclusive upon this question; and it is now settled by numerous cases that we must look to all the circumstances of the case and consider whether the execution proceedings were really brought to an end. But it must be borne in mind that this question is in a great measure, if not entirely, a question of fact. When the matter was before this Court in the case of Pyaroo Tuhobildarinee v. Syud Nazir Hossein (23 W.E.183), we were dealing with it as a Court of Regular Appeal; and, therefore, we were entitled to go into the facts, and I think, as appears from the report in that case, that we dealt with the question there as a question of fact.

3. In this case the District Judge has found, as a fact, that the previous execution proceedings closed on the 9th September 1873; and the only ground upon which we, as a Court of special appeal, can say that he was wrong in coming to that conclusion is, by saying that he has misunderstood the nature of this arrangement. I am not prepared to go to that length. The District Judge says that he understands this arrangement to have been that the decree-holder would not execute his decree against the judgment-debtor by putting him into jail so long as he would pay him 10 rupees a month; and he does not understand it to have been any part of that arrangement that execution proceedings should be kept pending. Whether the parties could make an arrangement to keep the execution proceedings pending, I need not consider. I see no sufficient reason to differ from the opinion of the District Judge, who has considered this case very carefully. I think, therefore, that there is no ground of special appeal whereon we can say that the District Judge was wrong. The appeal must be dismissed with costs.

Prinsep, J.

4. I am also of opinion that execution of this decree is barred by limitation, because more than three years have elapsed from the date of the last application to the Court to enforce, or to keep in force, the decree. So far as the facts appear from the judgment of the District Judge, it seems that the last application to execute this decree was in January 1873. The present application is now made in June 1877. It is true that in the interval the judgment-debtor was arrested on the application of

1873, and that an arrangement was come to by which he was to pay 10 rupees per month, which he ceased to do in October 1876; but so far as the execution of this decree went, it ceased on his release from arrest, and more than three years have elapsed since the last application was made. On the first objection taken in special appeal, I entirely agree with the judgment which has just been delivered.