

(1879) 07 CAL CK 0008

Calcutta High Court

Case No: None

Golam Arab

APPELLANT

Vs

Curreembux Shaikjee

RESPONDENT

Date of Decision: July 11, 1879

Citation: (1880) ILR (Cal) 294

Hon'ble Judges: Richard Garth, C.J; White, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

It seems that since the year 1850, when the Small Cause Court Act IX of 1850 was passed, a number of suits of this nature have been brought from time to time in the High Court, and judgments have been obtained in them without objection. None of them were defended, and the question seems never to have been seriously raised, until about a year ago, whether such suits would lie. So that we have now to decide that question in an Appellate Bench of this Court for the first time.

2. The particular point upon which Mr. Justice Pontifex dismissed the suit appears to us to be only one of several considerations, which ought to be enquired into, for the purpose of ascertaining whether it was the intention of the legislature, that judgments in the Small Cause Courts should be enforced by suits in this Court. We must see how far such suits are consistent with the provisions of Act IX of 1850; and on the other hand, how far such suits are calculated to defeat the intentions of that Act.

3. The same question arose in England, after the passing of the first County Court Act there. That Act was the 9 and 10 Vict., cap. 95, and its provisions were in many respects very similar to those of the Indian Act of 1850, which was passed a few years later.

4. The case in which the subject was first discussed was Berkley v. Elderkin (1 Q.B., 805). The point was there raised for the first time in the Court of Queen's Bench,

whether an action would lie in a Superior Court upon a judgment of the County Court; and Lord Campbell in his judgment says this:

Prima facie, an action lies on the judgment of every Court of competent jurisdiction; but I think it quite clear, when we look at the provisions of the 9 and 10 Vict., cap. 95, that the intention of the legislature was to confine the remedy on the judgments of Courts constituted under that Act to the remedies specifically provided by the Act.

The policy of the Act was to give a cheap and easy remedy for the recovery of small debts. The intention of the legislature will be entirely defeated, if the creditor is at liberty to adopt this course.

The Act provides special remedies for enforcing the judgment.

5. His Lordship then goes to point out particular provisions in the County Court Act, which were inconsistent with suits being brought upon County Court judgments, and which would tend to defeat the objects of the Act itself.

6. Thus, by Section 96, the wearing-apparel and bedding of the execution-debtor, and the tools and implements of his trade to the value of £ 5, were to be protected from execution.

7. "That protection," says His Lordship, "would be entirely lost, if this action were maintainable, for, on a judgment of the Superior Court, a fi fa might be issued under which the debtor's tools in trade might be taken and sold by the Sheriff."

8. So, again, as to the debtor's person.--He could be imprisoned under the Act for only forty days; and, then, not by way of execution, but as a punishment for contempt of Court. But if an action in the Superior Court lay upon the judgment, the debtor would be subject to the ordinary process of execution in the latter Court over and above what he might have undergone in the County Court.

9. Then, again, by Section 100 of the County Court Act, the Judge of the County Court had a right to rescind or alter any order that might have been made against any defendant for the payment by instalments or otherwise of any debt or damages recovered, and to make any other order, either for the payment of the whole of such debt or damages, or by instalments, or otherwise, as to the Judge might seem just. "This shows ", says Lord Campbell, "that there is nothing in the nature of a final judgment in the County Court."

The Judge has still jurisdiction over this very judgment on which this action is brought. He might now rescind or alter it and make a new order to pay by instalments, or at some other time. That power given to the Judge would be defeated if this action lay.

10. This last point was also especially relied upon by Mr. Justice Wightman; and the Court unanimously decided that the action would not lie.

11. This case was followed by the Court of Exchequer in the case of *Austin v. Mills* (9 Ex., 288), and it has since been the undoubted law of Westminster Hall.

12. The only reported case in which, so far as we can find, the question has been at all discussed here, is that of *Khoblall Baboo v. Ram Chunder Bose* (I.L.R., 2 Cal. 434).

13. Some doubt having been expressed at that time by one of the Judges of this Court, as to whether a suit of this kind was maintainable, Mr. Justice Kennedy proposed to refer the question to a Full Bench; but as his Lordship's own opinion was in favor of the practice which had prevailed, of allowing such suits, it was considered that the case was not one for a Full Bench; and, after hearing an *ex parte* argument from Mr. Benerjee, Mr. Justice Kennedy decided in accordance with the existing practice.

14. The ground of the learned Judge's decision appears to have been, that the particular provisions in the County Court Act in England, which influenced the Courts there in deciding that such suits would not lie, were not to be found in Act IX of 1850; but it is much to be regretted that the case was not argued on the part of the defendant, because his Lordship's attention does not appear to have been called to certain provisions of Act XI of 1850, which seem to us to render the arguments and reasons, used by the Court in *Berkley v. Elderkin* (1 Q.B., 805), directly applicable to suits like the present.

15. Thus, by Sections 58--60, 61 and 68 of the Act IX of 1850, a debtor may be taken in execution for non-payment of a sum which he has been ordered to pay, but his imprisonment is not to operate as a satisfaction of the debts, and is not to continue for more than six calendar months; and when the debtor has once been taken in execution, he cannot be imprisoned again upon the same judgment.

16. But if the judgment-creditor can bring a suit upon the judgment in the High Court, he would, of course, have the usual remedies for enforcing the judgment which he obtains there; and one of those remedies would be, that he might imprison the execution-debtor again, notwithstanding the provisions of Section 61 of the Act of 1850.

17. This would obviously be in direct contravention of the intention of the latter Act; and this is the point upon which the judgment of Mr. Justice Pontifex proceeded in the Court below.

18. Again, by Section 69 of the same Act, certain goods of the judgment-debtor are exempted from execution, precisely as they are by the County Court Act in England, namely, the wearing-apparel and bedding of himself and his family, and the tools and implements of his trade.

19. But if the judgment-creditor can sue in this Court on the Small Cause Court judgment, he may, under the process of this Court, execute his decree against all the properties of the debtor including that which is protected by the Act of 1850.

20. Then again, u/s 71 of the Act of 1850, the Small Cause Court has power, in case of the sickness of the debtor or his inability to pay, to suspend or stay any judgment or order which may have been pronounced against him in any action, for such time and on such terms as it shall think fit, and so from time to time to suspend "or stay such judgment or order, until the defendant's disability shall have ceased."

21. This is a very similar provision to that of the English County Court Act; and the effect of it, as pointed out by the Court of Queen's Bench, is to make the judgment of the Small Cause Court not final. The Judge has power to suspend or stay a judgment, or give the defendant further time to pay it.

22. It is clear, that this provision would be entirely defeated, if the judgment-creditor could bring a suit upon his judgment and enforce it at once in this Court. It would be absurd to allow a judgment-debtor to be sued upon a judgment in the High Court, while the Small Cause Court Judge might be staying that judgment in the Court below, or giving the debtor further time to pay it.

23. The provisions, which we have pointed out in the Act of 1850, seems precisely analogous to those of the County Court Act, which induced the Courts in England to decide, that a suit does not lie upon a County Court judgment, and we think that the arguments of the Judges in the case of Berkley v. Elderkin (1 Q.B., 805), are directly applicable to the present case. The Act of 1850 provided new rights for creditors with special and appropriate remedies; and if the ordinary remedies in the High Court were superadded to these, not only would the objects of the Act be defeated, but it might become, in the hands of creditors, an instrument of injustice and oppression.

24. We may observe that this point was decided many years ago in the Supreme Court of Bombay, in accordance with the view, which we now take of it, and that the decision has since been considered as the law of the Bombay High Court.

25. The appeal is dismissed without costs. Costs to be taxed on scale 2.

White, J.

26. I quite concur in the judgment of the Chief Justice. The case referred to by my Lord was determined in the late Supreme Court of Bombay about twenty years ago. It was determined on the authority of Berkley v. Elderkin (1 Q.B., 805) and Austin v. Mills (9 Ex., 288); the learned Judges who decided the case holding that the reasons for the decisions of the Court of the Queen's Bench and the Court of Exchequer applied to a judgment of the Small Cause Court of the Presidency-towns of India equally as well as to a judgment of the County Court in England. The case is not reported because at that time there were no reports of the Supreme Court at Bombay in existence, but I was counsel in the case which arose upon demurrer, filed to an action on a judgment of the Small Cause Court at Bombay. I argued the demurrer, and the demurrer was allowed.

27. Since that date, as far as my experience goes, it has always been considered to be the law in Bombay that no action will lie on the judgment of a Small Cause Court.