

(1887) 07 CAL CK 0014
In the Calcutta High Court

Abdul Rahaman Sodagur

APPELLANT

Vs

Dullaram Marwari

RESPONDENT

Date of Decision : 22-07-1887

Acts Referred:

Limitation Act, 1963 — Article 175

Citation : (1887) 07 CAL CK 0014

Hon'ble Judges : Norris, J; Macpherson, J

Bench : Division Bench

Judgement

Macpherson, J.—I think the Munsif's decision is right and that of the Subordinate Judge wrong.

2. The decree is dated the 30th August 1880 and the first application to execute it was preferred on the 25th May 1881.

3. Three days afterwards the judgment-debtor petitioned to be allowed to pay the amount due under the decree by instalments extending over many years, the instalments being set out in the petition, which was made with the consent of the decree-holder. The Court passed this order: "According to the application of both parties it is ordered that the case be struck off and the decree be returned." The present application to execute was made on the 7th March 1885. The Munsif has held that it is out of time, more than three years having expired since the date of the last application. The Subordinate Judge considered that the Court recognized the arrangement proposed by the parties, and that u/s 210 of Act X of 1877, which corresponds with Section 210 of the present Code, the order above referred to must be taken to embody an order that the amount of the decree should be paid by instalments.

4. I am unable to adopt this view. The second clause of Section 210 empowers a Court, after the passing of a decree for the payment of money, to order, on the application of the judgment-debtor and with the consent of the decree-holder, that the amount decreed be paid by instalments ; and the last clause enacts that

"save as provided in this section and Section 206, no decree shall be altered at the request of partie Section" If, therefore, a decree is silent as to the manner in which it is to be executed, and no subsequent alteration is to be made by order of the Court, the decree must be executed as it stands. It is clear that in this case there was no order either directing an alteration of the decree or that the amount should be paid by instalments, and the Court was not in a position to make any such order as, under article 175 of schedule II of the Limitation Act the application should have been made within six months from the date of the decree. "We cannot, therefore, give to the order of the Court the extended meaning which the Subordinate Judge gives, and the mere fact that an amlah of the Munsif has recorded on the back of the decree the instalments set out in the petition of the parties, does not help the appellant, as it is not shown when or under whose orders he did this.

5. A case--Jhoti Sahu v. Bhubun Gir 11 C. 143--has been cited, in which the Court held that, although there was no direct order, there was a substantial compliance with the provisions of Section 210. Whether this is so or not must depend on the facts of each case.

6. As more than three years have expired since the date of the last application, or since any written admission of the judgment-debtor of his liability, the decree cannot be executed. I would, therefore, reverse the order of the Sub-Judge and restore that of the Munsif but I would under the circumstances allow no costs of this appeal.

Norris, J.

7. I agree with Macpherson, J., in allowing this appeal. I have pointed out to my learned colleague, Mr. Justice Mitter, that in the case of Jhoti Sahu v. Bhubun Gir 11 C. 143 we overlooked the provisions of article 175 of the Limitation Act, and I am authorized by him to say he concurs with me in thinking that our decision in that case was erroneous.