
(1889) 03 CAL CK 0013
In the Calcutta High Court

Abdul Wahed and Others

APPELLANT

Vs

Fareedoonnissa

RESPONDENT

Date of Decision : 01-03-1889

Acts Referred:

General Clauses Act, 1897 — Section 6

Citation : (1889) ILR (Cal) 324

Hon'ble Judges : Tottenham, J; Banerjee, J

Bench : Division Bench

Judgement

Tottenham and Banerjee, JJ.—The question in this appeal is purely one of law, and that law relates, we think, simply to procedure.

2. We think that the Court below has made a mistake in dealing with that question. The appellants before us were in a former suit respondents in this Court in an appeal from an original decree. In that appeal the appellant was required by this Court to furnish security for costs. The present respondent became surety. That appeal was ultimately dismissed with costs; and the respondents, who are now before us as appellants, seek to recover their costs from the surety. They applied to the lower Court for execution of the decree for costs against the surety. On the 9th June last the lower Court rejected their application, holding that, under the law as then laid down by the Civil Procedure Code, the security bond could not be enforced by means of execution of the decree, and that the judgment-creditors must have recourse to a fresh suit against the surety. The judgment-creditors did not appeal against that decision, nor have they brought a fresh suit to recover the amount of the security. In the meantime, on the 1st July 1888, Act VII of 1888 came into force. By Section 46 of that Act, Section 549 of the Code received the following addition: "If such security be furnished, any costs for which a surety may have rendered himself liable may be recovered from him in execution of the decree of the Appellate Court in the same manner as if he were the appellant." The judgment-creditors, taking advantage of this provision of the new Act, made a fresh application on

the 28th July for execution against the surety. On the 24th November last this application was likewise rejected by the lower Court. The lower Court referred to Section 6 of the General Clauses Act which enacts: "The repeal of any Statute, Act or Regulation shall not affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings commenced, before the repealing Act shall have come into operation." And the Subordinate Judge goes on to say that "the question whether the decree-holders can enforce the security bond was raised and decided before the amending Act came into operation, and the proceedings against the surety had been commenced before that time."

3. It seems to us that the lower Court was mistaken in its application of this section of the General Clauses Act. By Act VII of 1888 the previous Statute was not repealed, and we think that the decision of the lower Court of the 9th June decided no more than that the existing law did not permit the decree-holders to recover from the surety in execution of the decree. The amending Act, which came into force a few days afterwards, expressly provides for such recovery from the surety in execution. The lower Court did not, on the 9th June, decide any question of right between the parties. It merely decided that, by the law as it stood then, the decree-holders must have recourse to a separate suit. The new provision of Act VII of 1888 is one of procedure, and not one which deals with any right. The right of the decree-holders to recover their money is not affected, nor is the liability of the surety to pay the money. The only alteration is as to the mode in which to recover.

4. We think, therefore, that the judgment-creditors were entitled to bring this fresh application under the new Act, and the Court below ought to have, granted it. That being so, we decree this appeal with costs.