

(1935) 06 CAL CK 0033
In the Calcutta High Court

Barisal Loan Office, Ltd.

APPELLANT

Vs

Sasthi Charan Bhattacharya and Another

RESPONDENT

Date of Decision : 26-06-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1936 Cal 282

Judgement

1. These two appeals have arisen out of proceedings in execution of decrees in which applications u/s 47, Civil P. C., were filed. The question raised in this application u/s 47 related to objection by the judgment-debtor company, appellant in this Court, to the execution of the decrees. It was asserted by the judgment-debtor company that a scheme of composition u/s 153, Companies Act, for payment of money due to the creditors of the judgment-debtor company was filed before this Court on 31st August 1933 and a preliminary sanction having been granted to the same, a meeting of the creditors was held in accordance with the order of this Court, and a scheme of composition was passed. The case of the judgment-debtor company was that after the scheme of composition u/s 153, Companies Act, had been filed in this Court and passed at a meeting of the creditors as provided by law the execution as started by the decreeholders could not proceed under the law. As it appears to be clear from the judgments of the Courts below, there was not and there could not be any dispute as to the facts, on which the judgment-debtor's objection u/s 47, Civil P. C., was based. There was no question also that the decree-holders concerned obtained their decrees against the judgment-debtor company long before the date on which a scheme of composition was agreed to between the creditors at a meeting held in pursuance of the order of this Court.

2. On the facts of the cases before us the composition as passed and sanctioned under the provisions contained in the Indian Companies Act applied to all the creditors of the judgment-debtor company, including the judgment-creditors. The circumstance that the decrees sought to be executed were passed long before the scheme of composition, could not possibly affect the position created by this

scheme of composition. If the decrees passed before the scheme of composition were not affected by the same as contended before us, the whole object of the scheme would be frustrated. In our judgment therefore the learned Judges in the Courts below are wrong in holding that the executions could be allowed to proceed as prayed by the decreeholders, and the reason given by them cannot be supported. In the result, the appeals are allowed, and the orders passed by the Courts below are set aside. The execution cases started by the decreeholders respondents giving rise to these appeals are dismissed, the objections by the judgment debtor company, appellant in this Court, u/s 47, Civil P. C., being allowed to prevail. There is no order as to costs in these appeals.