

(1916) 06 AHC CK 0016
In the Allahabad High Court

Bhairon Prasad

APPELLANT

Vs

Musammat Amina Begam

RESPONDENT

Date of Decision : 12-06-1916

Acts Referred:

Citation : 35 Ind. Cas. 693

Hon'ble Judges : Walsh, J;Piggott, J

Bench : Division Bench

Judgement

Piggott, J.—This is an application against a decision on the execution side of the learned Judge of the Court of Small Causes at Cawnpore. The question before the Court below was whether a certain application for execution was within time. It was within time, if a previous application "by the decree-holder made on the 3rd of April 1912 was an application to the proper Court to take a step-in-aid of execution. The application of 3rd April 1912 has been read to us. It is to the effect that the decree-holder is doing his best to discover the address of the judgment-debtors, a pardanashin lady and her son, and as he has hitherto failed to do so he asks the Court for time to enable him to prosecute his enquiries further, he was given time to the 19th of April 1912, but as he had taken no steps in this interval, and failed to appear before the Court on the 19th of April 1912, his application was struck off. The attention of the learned Judge of the Court below was duly called to the decision of this Court in Pitam Singh v. Tota Singh 29 A. 301 : 4 A.L.J. 184 : A.W.N. (1907) 74. He appears to have fully realised that he was bound to follow that decision. He distinguished against it on the ground that the present decree-holder's application of the 3rd of April 1912 was not in his opinion made in good faith. He gives no reason for this opinion, and we were unable to discover any such reason on examining the record. We eventually decided to give parties time to file affidavits explaining their position. An affidavit has today been filed on behalf of the decree-holder. He stated that he was incapacitated by illness shortly after his application of the 3rd of April 1912 was granted, and was consequently unable to take any steps, or to attend the Court on the date fixed. After that he continued to make enquiries as to the

whereabouts of the judgment-debtors, and presented his further application for execution as soon as he had been able to discover their correct address. This affidavit is not contradicted. I think under the circumstances the decision of the Court below did not proceed on a pure question of law. It was arrived at by gratuitously assuming a question of fact against the decree-holder. On this ground I would allow this application, set aside the order of the Court below, and remand the case to that Court with directions to re-admit the application for execution to its pending file, and to proceed with it according to law.

Walsh, J.

2. I agree, but I want to say one word on the decided cases. I think it is impossible to hold that an honest application to extend time, that is, to prevent limitation running against you is not a step-in-aid of execution. What conceivable object any decree-holder can have in an application for time, unless it is to assist himself in execution of his decree, passes my understanding. Mr. Justice Banerji thought that there was a conflict between the decisions of the Calcutta High Court and this Court on this question. It is extremely difficult to ascertain with certainty from the reports whether this is so or not. The view attributed to the Calcutta Court has its origin in a case where the point was not necessary for the decision and where there would have been good reason for holding, if it were necessary, that the application for time was neither necessary nor bona fide, and was rightly rejected. And if the view taken in the Calcutta decision really is, and there is nothing in the report inconsistent with it, that an application for time, if it is shown by subsequent events not to have been a genuine application at all, may properly be held not to have been a step-in-aid of execution, I should agree with it; but the decision in this Court, which my brother Piggott, J., has already referred to, puts the thing on clear and, I think, absolutely unassailable grounds. If it is bona fide, it is clearly in aid of execution. The result is that prima facie such an application is in aid of execution until it is shown to be mala fide. I do not think there is really any conflict between these cases.

3. The application is allowed, the order of the Court below set aside, and the case remanded to that Court with directions to re-admit the application for execution to its pending file and to proceed with it according to law. The decree-holder is entitled in his costs.