

(1887) 02 CAL CK 0009
In the Calcutta High Court

Chandra Prodhan

APPELLANT

Vs

Gopi Mohun Shaha

RESPONDENT

Date of Decision : 03-02-1887

Acts Referred:

Citation : (1887) ILR (Cal) 386

Hon'ble Judges : Prinsep, J;Beverley, J

Bench : Division Bench

Judgement

1. The decree now under execution for arrears of rent was passed on the 21st July 1882, for a sum less than Rs. 500. Execution was taken out on the 19th May 1885, and notice u/s 248 of the CPC issued before the decree was actually put into execution. On the 20th of June the judgment-debtor objected to execution and applied to have the ex parte decree set aside. On the same day the application for execution was struck off. On the 21st of November following the application on behalf of the judgment-debtor to obtain a re-hearing of the suit Appeal from Order, No. 403 of 1886, against the order of H. Peterson, Esq. Officiating Judge of Dinagepore, dated the 18th of August 1886, affirming the Order of Baboo Sitikantha Mullick, Munsif of that district, dated the 22nd of May 1886, was dismissed. On the 3rd of February 1886, application was made to execute this decree. It is now objected u/s 58, Beng. Act VIII of 1869, that execution is barred inasmuch as more than three years have elapsed since the date of the original decree. If the application of the 3rd February 1886 be regarded as a fresh application to execute, no doubt it is barred; but we are inclined to take the view expressed in Kalyanbhai Dipchand v. Ghanshamlal Jadunathji 6 A. 23, and to hold that this application is a continuation of the previous application of the 19th May, 1885. Execution of the decree was suspended on the action of the judgment-debtor and, although the law does not permit us to deduct the period during which it was so suspended in calculating the period allowed by the law of limitation, we think that we may properly take the application of the 3rd February, 1886, as an application to the Court of execution to withdraw the order passed on the 20th June, 1885, which

suspended the execution in consequence of the objection of the judgment-debtor.

2. The appeal is therefore dismissed with costs (2).