
(1921) 05 CAL CK 0035
In the Calcutta High Court

Chaturbhuj Chandanmull

APPELLANT

Vs

Basdeo Das Daga

RESPONDENT

Date of Decision : 25-05-1921

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5(2)

Citation : 66 Ind. Cas. 198

Hon'ble Judges : Lancelot Sanderson, C.J;Richardson, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C. J.

1. This is an application for an order that the execution of the decree, dated the 22nd of March 1921, be stayed until the final determination of the appeal, upon the appellants furnishing such security to the satisfaction of the Registrar and within such time as the Court may be pleased to direct.

2. The case was tried by my learned brother Mr. Justice Rankin, who, on the 22nd of March 1921, gave judgment in favour of the plaintiff for the sum of Rs. 41,131 (Rs. 41,000?). It was alleged by the appellants, though denied by the plaintiff, that negotiations with regard to settlement took place. They, however, came to nothing and the plaintiff applied in the ordinary course to the Master for execution of the decree.

3. Thereupon, on the 14th of April 1921, nearly a month after the judgment had been given by Mr. Justice Rankin, the appellants applied to Mr. Justice Greaves. for stay of execution of the decree, pending the final determination of the intended appeal, and obtained an interim stay of the said execu. particular case, execution ought to be stayed, If the application is made to another Judge, sitting in Chambers, it must be obvious that much time will be wasted by putting before the learned Judge all the material facts of the case on the one side and on the other, and, it must further be obvious, that he cannot be in such a good position to judge whether execution should be stayed as the learned Judge who tried the

case. The Order in the Civil Procedure Code, Order XL I, Rule 5 (2), to my mind clearly contemplates that that course should be adopted, because it provides: "Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed."

4. The practice which obtains in England is, that if a party against whom judgment has been given, desires to obtain a stay of execution pending an intended appeal, he applies in the first instance to the Judge who tried the case except under special circumstances.

5. Further, the application must be made without unreasonable delay; that is provided by Clause (6) of Sub-rule (3) of Order XLI, Rule 5, of the Civil Procedure Code, viz., that the application has been made without unreasonable delay," Apart from the rule, it must be obvious that, that is a wise and essential direction, the application should be made to the learned Judge who tried the case at a time when he still has the material facts in his mind. In the present case the judgment was delivered on the 22nd of March by Mr. Justice Rankin, but the application for stay of execution was not made until the 14th of April to Mr. Justice Greaves.

6. In future the practice which I have indicated as to an application for stay of execution on the Original Side pending an intended appeal (I limit my remarks to such an application) should be followed, viz, that the application for stay must ordinarily be made to the Judge who tried the case, and the application must be made without unreasonable delay. It may be that in an exceptional case and for special reasons it will be necessary to apply to a Judge other than the Judge who tried the case, but the above-mentioned practice is ordinarily to be followed.

Richardson, J.

7. I entirely agree.