

(1929) 02 CAL CK 0004
In the Calcutta High Court

Dwarka Nath Chuckerbutty

APPELLANT

Vs

Imperial Bank of India

RESPONDENT

Date of Decision : 25-02-1929

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 29(1)(6), 39(1)(a), 39(1)(b)

Citation : 122 Ind. Cas. 289

Hon'ble Judges : Panton, J;B.B. Ghose, J

Bench : Division Bench

Judgement

B.B. Ghose, J.—This is an appeal by the judgment-debtor against an order of the Subordinate Judge, dated the 11th of April, 1928, rejecting the objection of the judgment-debtor to the execution of the decree which was transferred from the Original Side of this Court to the Court of the Subordinate Judge. The objection of the judgment-debtor in the Court below was this: The decree-holders had attached certain properties consisting of shares in some companies which they allege belong to the judgment-debtor in execution of the decree under an order of the High Court. They asked for transfer of the decree to the Alipur Court u/s 39 of the Civil Procedure Code. The decree-holders gave an undertaking to the High Court that the properties attached by that Court shall not be sold until the properties attached by the Alipur Court have been sold. The objection of the judgment-debtor was that the High Court had no jurisdiction to send the decree for execution to the Alipur Court under the provisions of Section 39 of the Civil Procedure Code. His contention was that under Clause (6), Sub-section (1), Section 29 of the CPC the decree-holders could only ask for the decree being sent for execution to another Court, if the judgment-debtor had no property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree. The Subordinate Judge rejected that contention on the ground that under Clause (a) of Section 39, Sub-section (1) of the Code the Court which passed the decree was entitled to send it for execution to the Alipur Court as the judgment-debtor actually and voluntarily resided within the jurisdiction of the Alipur Court. The contention before the Subordinate Judge and

also before us was that Clause (a) only applies if the execution of the decree is sought to be made by personal arrest of the judgment-debtor and not as against his property. In our opinion, this contention is not sound. When the decree-holder asks for sending the decree for execution to another Court, it is not necessary for him to specify the manner in which the decree is intended to be executed either by arrest of the person of the judgment-debtor or by attachment and sale of his properties, moveable or immoveable. It is sufficient for him to satisfy the Court that the application falls within one or other of the clauses of Sub-section 1 of Section 39 of the Civil Procedure Code. If a decree-holder satisfies the Court which passed the decree that the judgment-debtor resides within the local limits of the jurisdiction of another Court he may ask for sending the decree for execution to that Court without stating anything more in his application and under such circumstances the Court which passed the decree has jurisdiction to transfer it for execution to that other Court. This contention, therefore, on behalf of the appellant cannot, in our opinion, be accepted. It was next urged that a decree cannot be sent for execution to another Court unless all the properties attached by the Court which passed the decree are sold in satisfaction of the decree. It was pointed out that in the two cases referred to in the judgment of the Subordinate Judge, viz. the case of Saroda Prosaudd Mullick v. Luchmepoot Singh Doojgur 14 M.I.A. 529 : 17 W.R. 289 : 10 B.L.R. 214 : 2 S. P.C.J. 560 : 3 S. P.C.J. 77 : 20 E.R. 883 and Krishto Kishore Dutt v. Roop Lall Dass 8 C. 687 : 10 C.L.R. 609, the properties within the jurisdiction of the Court which passed the decree had either actually been sold or were shown to be not sufficient to satisfy the decree. Under those circumstances only it was held that simultaneous execution could be had in several Courts. It was contended that simultaneous execution can be bad in several Courts if there is no execution pending in the Courts which passed the decree or in other words no execution can be levied simultaneously in the Court which passed the decree and other Courts. If simultaneous execution in different Courts is allowed, we do not see on what principle it can be said that simultaneous execution in the Court which passed the decree and the Court within the local limits of which the judgment-debtor resides is illegal. We are of opinion that under Clause (a) of Section 39 (1) the decree may be sent for execution to a Court within the local limits of which the judgment-debtor resides. No doubt, under Clause (6) if the decree is sought to be sent to a Court within the jurisdiction of which the judgment-debtor does not reside it would be necessary for the decree-holder to satisfy the Court that the judgment-debtor has not sufficient property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy the decree. We, therefore, agree with the decision of the Subordinate Judge that the High Court was quite competent to transfer the decree for execution to the Court below.

2. We are, however, of opinion that the procedure adopted by the decree-holder in this case is calculated to work oppressively and the reason for our thinking so is this : Suppose the judgment-debtor has properties of sufficient value within

the local limits of the jurisdiction of the Court which passed the decree. The decree-holders have attached those properties, the result of which is that the judgment-debtor cannot sell them and pay off the decree-holder. The decree-holders have undertaken not to sell those properties till properties within the jurisdiction of the Court below are sold. The decree-holders' desire to execute the decree there by attachment of moveable properties or it may be by arrest of the judgment-debtor. The judgment-debtor is prevented from selling his properties by the sale of which he could probably pay off the decree-holders by reason of the attachment. The decree-holders also do not proceed to sell those properties. The result of this procedure would be that although the judgment-debtor may have sufficient properties within the jurisdiction of the Court which passed the decree by the sale of which the decree might be satisfied he may be put into trouble by execution of the decree at the place where he resides while his properties remain under attachment. Such a situation should be avoided, if possible. We, therefore, direct, while dismissing the appeal, that the lower Court will not proceed with the execution of the decree unless the decree holders produce an order from the Court which passed the decree that all the properties which had been attached by the decree-holders within the jurisdiction of that Court have been sold and the decree remains unsatisfied or that those properties have been released from attachment. Only under those circumstances, the decree-holders would be allowed to proceed with the execution of the decree within the jurisdiction of the Alipur Court.

3. With regard to Appeal No. 62 of 1928, it is not necessary for us to say anything in detail. It seems that although the words of the application are "stay of proceedings" the application was simply for adjournment of the execution of the decree till the decision of the question of adjustment of the decree. The Subordinate Judge refused to allow adjournment on the grounds stated by him. Having regard to the nature of the order, we do not think that there is an appeal against such an order. The question whether we could interfere u/s 115 or not is now purely academical because there has been, as a matter of fact, stay of proceedings up to this date. This appeal is dismissed and we direct that the Subordinate Judge should take up the question of adjustment as soon as practicable and dispose of the matter.

4. As we have given the judgment-debtor some relief in Appeal No. 361 of 1928 we make no order as to costs of these appeals. No order is necessary on the application for revision which is also dismissed without costs.

5. Let the records be sent down without delay.

Panton, J.

6. I agree.