

(1903) 03 CAL CK 0024

In the Calcutta High Court

Case No : Appeal from Original Order Nos. 160 and 161 of 1902

Harish Chandra Tewary

APPELLANT

Vs

Chandpore Company Limited

RESPONDENT

Date of Decision : 25-03-1903

Acts Referred:

Citation : (1903) 03 CAL CK 0024

Final Decision : Dismissed

Judgement

Maclean, C.J.—There is no dispute as to the facts, which are accurately stated in the first portion of the judgment appealed against. I need not recapitulate them.

2. The question is whether the decrees can be enforced against the Chandpore Company, Limited, assuming that that Company took over the liabilities of the Patkabari Indigo Planting and Estates Company and as the legal representatives or assignees from the latter Company. To effect this object, the decree-holder *says that for the purpose of enabling him to execute the decree the question arises in the execution proceedings; he is entitled to proceed either u/s 234 or 372 of the CPC and to have the Chandpore Company substituted in the execution proceedings in the place of the Indigo Company. I am clear that Section 234 does not apply. We can hardly say that here the judgment-debtor has died. We do not know whether before the Indigo Company was dissolved in England provision was made for the payment of its debt.

3. As regards Section 372. I am at least doubtful whether it applies to execution proceedings. But assuming it does, the present case is not within it. That section applies to the "assignment, creation or devolution of any interest," which must, I think, mean interest in the property, the subject-matter of the suit. There was no such assignment here: if there were any assignment at all, it was of the liability of the Indigo Company to pay the decree holder's debt. This would not have been properly the subject of an assignment, nor the creation or devolution of an interest: if there were any such contract, it probably took the form of a covenant by the Chandpore Company, to pay the debts of the Indigo Company or to

indemnify the latter against them. This does not appear to me to be the assignment, creation or devolution of an interest within the meaning of Section 372.

4. The appeal is dismissed with costs. This decision covers appeal 161 which is also dismissed with costs.

Stevens J.

5. I concur.