

(1923) 07 CAL CK 0047
In the Calcutta High Court

Jaharlal Sadhukhan and Others

APPELLANT

Vs

Chandra Kanta Pal and Another

RESPONDENT

Date of Decision : 24-07-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 5
Presidency Small Cause Courts Act, 1882 — Section 31

Citation : AIR 1928 Cal 265

Judgement

1. This is an appeal against the order of the District Judge of the 24-Parganas affirming the order of the Subordinate Judge, fourth Court of Alipur, refusing the execution of a Small Cause Court decree on the ground that it is barred by limitation.

2. The appellants obtained a decree in the Presidency Small Cause Court on 4th December 1918. Their case is that on 11th August 1919 they made an application to the Small Cause Court Judge for transfer of the decree to the Hooghly District for execution and that by this application their application for execution made on 9th January 1922 was an application within-time. The lower appellate Court has held : firstly, that they have not proved that any application was made for transmission of the decree; and secondly, that the application was not in accordance with law.

3. As regards the first point : we think the learned District Judge was wrong in refusing to admit in evidence a certified copy of the proceedings of the Small Cause Court Judge which was filed at the appellate stage. Apparently in the first Court the fact that the application for transmission had been made was not seriously disputed. When the question arose before the appellate Court we think the learned Judge should have allowed the appellants to file this certified copy of a public document in order to prove that they had applied for transmission.

4. As regards the second point it has been held that the application was not in accordance with law because it did not comply with the provisions of Section 39, Civil P.C. Here the learned Judge was in error for, under the Presidency Small

Cause Court Act and the rules framed thereunder, Section 39, Civil P.C., does not apply to decrees passed under that Act. Section 31, Presidency Small Cause Courts Act, provides for the transmission of decrees to be executed outside the jurisdiction of the Presidency Small Cause Court. The particular ground on which the application has been held to be not according to law is that it sought to transmit the decree to the Hooghly Court and it is found that the judgment-debtor neither resided nor carried on business in the Hooghly District. It appears from the evidence put before us that the judgment-debtors resided and had property at Uluberia which is a subdivision of the District Howrah using the word "district" in its ordinary sense as the jurisdiction of the District Magistrate. But it also appears that the District Judge of Hooghly has jurisdiction over both the administrative districts of Hooghly and Howrah. It, would, therefore appear that the fact that the application was made to a Court in the Hooghly District did not necessarily render it an application that was not in accordance with law.

5. But a difficulty arises as to the actual application that was made. In the copy of the proceeding which was filed before the lower appellate Court and which we have now admitted in evidence it appears that the order passed was that the copy of the judgment was to be transmitted to the Subordinate Judge's Court of Hooghly to be executed in the Munsif's Court of Uluberia. At the hearing of the appeal before us another certified copy of apparently the same proceeding has been filed and on that copy the order is recorded that the copy of the judgment be transmitted to the District Judge's Court of Hooghly to be executed in the Munsif's Court of Uluberia. If the application was for transmission to the District Judge's Court of Hooghly the application would appear to be in accordance with law. Clause (b), Section 31, Presidency Small Cause Courts Act, enables the Presidency Small Cause Court to transfer a decree direct to the Court which would execute it and does not require it to be sent through the District Judge as is provided by the provision of the CPC in Order 21, Rule 5. At the same time there is nothing in Section 31(b) which would prevent the Presidency Small Cause Court from transmitting a decree in the first instance to the District Judge within the local limits of whose jurisdiction the judgment-debtors-reside or their property might be found.

6. A further objection has been taken on behalf of the respondents that the application was not in order, because it further requested that the decree should be executed by the Munsif of Uluberia. It is said that at the time this application was made the Munsif of Uluberia had not? jurisdiction to execute a decree the total amount of which exceeded Rs. 2,000. We do not think that this renders the application not in accordance with law. If the application was properly sent to the District Judge the reference to the Munsif of Uluberia would not prevent him from sending it to the proper Court for executing it, if as a matter of fact the Munsif of Uluberia had not jurisdiction to execute the decree.

7. We think, therefore, that it is necessary that an enquiry should be made and it should be ascertained what was the order for transmission that was actually

passed by the Presidency Small Cause Court. It is necessary not only for the decision of this appeal, but also because it is a serious matter that from the same Court two certified copies of the same proceeding differing in material particulars should issue. If from the result of this enquiry it appears that, the application was for transmission to the Court of the District Judge of Hooghly we would hold that the application was made according to law and the present application for execution is not barred by limitation. Should it be found that the application was for transmission to the Subordinate Judge of Hooghly that, would be an application for transmission to a Court which had not jurisdiction to execute the decree. It would then be necessary for the learned District Judge to consider whether the application was made in good faith or not. We are unable to accept his reasoning that because there is no evidence that the application was made in bona fide mistake it should be held that it was not made in good faith. Unless there are reasons to the contrary it seems unlikely that an application of this kind would be deliberately made for transmission to a Court not having jurisdiction, and having regard to the somewhat complicated nature of the jurisdiction of the District Judge of Hooghly an honest mistake is by no means impossible.

8. We accordingly set aside the order of the lower appellate Court and remand the appeal to him for rehearing and decision in accordance with these directions, and also we direct that he do make a full enquiry as to the issue of these two discrepant copies which will be sent to him. They will be marked Exs. HC 1 and HC 2.

9. The costs will abide the result. We assess the hearing-fee at two gold mohurs.