

(1896) 02 CAL CK 0009
In the Calcutta High Court

Jogendra Chandra Ghose and Another	Vs	APPELLANT
Maresh Chandra Dutta		RESPONDENT

Date of Decision : 26-02-1896

Acts Referred:

Citation : (1896) ILR (Cal) 480

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

Bench : Division Bench

Judgement

Trevelyan and Beverley, JJ.—In this case a decree was made by the Subordinate Judge of 24-Pergunnahs, and was sent for execution to the Court of the District Judge of Jessore u/s 224 of the Code of Civil Procedure.

2. The judgment-creditor is seeking to execute the decree against property situate within the jurisdiction of the Subordinate Judge of Khulna, which is in the Jessore District. On the 28th May 1894 this decree was sent to the Subordinate Judge of Khulna for execution. The order sending it was not signed by the District Judge, but purports to have been signed by his sheristadar "by order of Court." Acting upon this order the property was attached. On an application being made on the 3rd of August 1895 for the sale of this property, objection was taken on the part of the judgment-debtor on the 12th September 1895 that the decree had not been transmitted to the Court by the District Judge of Jessore, and therefore could not be executed.

3. The real question which we have to determine is whether there is anything in the law which makes it obligatory on the Judge to sign an order of this description, and whether the absence of the signature of the Judge renders the proceeding void. There is in the particular sections of the CPC relating to this matter nothing which in any way requires the Judge to sign the order, and there is no general provision of the Code requiring all orders to be signed by the Judge who makes them. There can be no doubt that it is extremely desirable that in all matters, at any rate, which are not matters of course or in the exercise of the ministerial powers of the Court, the Judge's signature should appear so as to

prevent any question as to the authenticity of the order. But unless there be some provision of law compelling his signature, we cannot hold that it is obligatory. In several sections of the Code there is express provision as to the signature of the officer making the order. Sections 55 and 57 provide for an order in the Judge's own hand. Section 58 requires the chief ministerial officer of the Court to sign memoranda, and so forth. Section 64 provides that every summons should be signed by the Judge or such officer as he appoints. Section 139 requires the Judge to record reasons, but does not provide for his signature. Sections 141 and 142 require the signature of the Judge. Section 205 does the same. Section 225 requires reasons to be recorded by the Judge, but does not require his signature, and Section 245 requires his signature, and so does Section 251. These are examples of the cases where there is express provision for the Judge's signature. In this case there is nothing absolutely requiring it, and therefore we consider that the absence of the Judge's signature does not vitiate the proceeding. The order bears the seal of the Court, and there is no serious dispute that it was signed by the sheristadar. No objection was taken to this proceeding, until about fifteen months after it had been acted upon. In our opinion the objection is not a bond fide one, and is made solely for the purpose of gaining time. We think therefore that no effect should be given to it.

4. We accordingly set aside the decision of the Subordinate Judge, and direct that the execution do proceed.

5. The judgment-creditors are entitled to their costs.