(1888) 08 CAL CK 0005

In the Calcutta High Court

Jogobundhoo Dass and Another — APPELLANT

Vs

Hori Rowoot and Another — RESPONDENT

Date of Decision : 02-08-1888

Acts Referred:

Citation : (1889) ILR (Cal) 17

Hon'ble Judges : Wilson, J;Rampini, J

Bench : Division Bench

Judgement

Wilson, J.—In this case we think that the Lower Appellate Court is in error in the view it has taken of the law.

2. The application was one for execution, and was made more than twelve years after the date of the decree. In the first Court the Munsif dismissed the application on that ground, the application being in his opinion, too late u/s 230 of the Code of Civil Procedure. The Lower Appellate Court has considered that the application is saved from the bar of limitation by reason of Sub-section (b) of Section 230, which says: "Where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date, ''the twelve years is to run from the date of the default in making the payment or delivering the property in respeet of which the applicant seeks to enforce the decree.''"

3. Now, it is sought to show that there was a subsequent order directing payment to be made on a certain date by reason of these circumstances: A prior application for execution by attachment of the person of one of the judgment-debtors was made within twelve years of the date of the decree and within twelve years previous to the date of the present application. When that judgment-debtor had been arrested be put in a petition asking that he might have fifteen days'' time within which to pay up the amount of the decree and so escape committal to prison. That petition was consented to, and the order made on it was, let the petition be filed." The Lower Appellate Court has considered that that order amounts to an order to pay on or before the 15th day. We think

that that is a very considerable extension of the order. In form certainly it is nothing of the kind; and even if we could suppose that the order adopts the terms of the petition, and can be read as embodying what appears in the petition, still it would not be an order for payment. The petition contains no new promise to pay; it simply asks for a stay of proceedings for fifteen days to enable the petitioner to pay up the amount of the decree the alternative obviously being that on expiry of the fifteen days, if the money was not paid, the execution proceedings should go on. This case therefore differs materially from the case of Jhoti Sahu v. Bhubun Gir ILR Cal. 143. In that case there was not a mere petition for time, but an actual agreement by way of compromise entered into between the parties for payment in certain ways; and the order was, that it should be recorded. The learned Judges in that case considered that the order there might be regarded as one embodying the compromise, and that, the compromise being an actual undertaking to pay, the order was an order to pay. On the other hand, in the case of Bal Chand v. Raghunath Das ILR All. 155 the facts are precisely similar to those of the present case; and the learned Judges there took the same view as we have taken here. For these reasons we think that the view taken by the Lower Appellate Court cannot be supported.

4. The result is that the order of the Lower Appellate Court must be set aside, and the order of the first Court, the Munsif, affirmed, with costs.

