

(1902) 05 CAL CK 0031
In the Calcutta High Court
Case No : Appeal from Order No. 43 of 1901

Kader Buksh Sarkar

APPELLANT

Vs

Gour Kishore Roy Chowdry

RESPONDENT

Date of Decision : 21-05-1902

Acts Referred:

Citation : (1902) 05 CAL CK 0031

Judgement

1. The question raised in this appeal is one of limitation. The decree in favour of the decree-holder was made on the 20th December 1895, but the application to execute the same was not made until the 5th May 1899, that is to say, more than three years after the date of the decree. Prima facie, the application is barred by limitation, but the contention on the part of the decree-holder has been that having regard to the provisions of sec. 20 of the Indian Limitation Act of 1877, it is not so barred, by reason of certain payments made within three years antecedent to the date of the application. The Munsif held that the application was barred, but the lower Appellate Court has come to a different conclusion. The whole argument advanced by the Subordinate Judge is based upon the consideration that the law on the subject, as it was under the Limitation Act of 1871, has been altered by sec. 20 of the present Limitation Act, and that the change favours the view that, by reason of payments made of any portion of the principal or interest covered by the decree, limitation is saved, if the application for execution is made within three years of such payment.

2. We have examined the provisions of sec. 20 of the Indian Limitation Act of 1877, and compared the same with the language of the law as it stood in the Act of 1871; but we are unable to say that the alteration, such as it is, has effected such a change in the law upon the subject as should lead us to hold that the word "debt," occurring in sec. 20, includes a judgment-debt, for unless it includes such a debt, the payment alleged to have been made could not save the application from being barred by limitation. It will be observed that secs. 20 and 21 of the Limitation Act of 1871 (corresponding to secs. 19 and 20 of the present Act), referred to debts only, and did not include judgment debts; and so it was

held in at least two cases: one to be found in Kally Prosonno v. Heeralal ILR 2 Cal. 468 (1877) and the other in Tarachand v. Ramgobind ILR 4 Cal. 780 (1879). This Court, in these cases, held that the word "debt," as mentioned in secs. 20 and 21, meant debt upon which an action could be brought, and did not include a judgment-debt. So far however as sec. 20 of the old law is Concerned, sec. 19 of the new law has effected a material change, and that change has been pointed out in the case of Ram Coomar v. Jakur Ali ILR 8 Cal. 716 (1882). It is necessary to read only a portion of that judgment, and it is as follows : "The words "application in respect of any property or right" were not in the previous Limitation Act, They are introduced for the first time into the one now in force and clearly with the object of extending to the applications which are mentioned in Sched., i.e., the same privilege as was under the old Act, and is also under the present Act accorded to suits." But the like consideration does not apply to sec. 20 of the new law; for no such words have been introduced into it, as in sec. 19, to indicate that the Legislature, while using the word "debt," meant to include in it a judgment-debt and to extend to an application for execution the same privilege as is accorded to a suit under the Act. The Subordinate Judge, in support of his view, has referred to the words in the proviso to sec. 20, and the learned vakil for the Respondent also places much reliance on them; but upon consideration of those words and comparing the same with the words in sec. 21 of the old law, we do not think that there is any real change in the law, so far as the particular matter now before us is concerned.

3. As to the words of sec. 20, it seems to us, putting upon those words their ordinary meaning, that they are referable to a debt upon which no judgment has been pronounced but upon which an action can be brought. We have however been referred, in this connection, to the provisions of Art. 179, second schedule of the Limitation Act; but the word used in that article do not, in our judgment, throw any light upon the question we have to determine.

4. In the view we have expressed it is obvious that any part payment made by the judgment-debtor subsequent to the decree cannot be taken cognizance of in determining the question whether the application before us is barred by limitation. We accordingly set aside the order of the Court below, and restore that of the Munsif with costs. Hearing-fee two gold mohurs.