

(1927) 07 CAL CK 0035
In the Calcutta High Court

Mahesh Chandra Sadhu and Others

APPELLANT

Vs

Jogendra Lal Sarkar and Others

RESPONDENT

Date of Decision : 22-07-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 29

Citation : AIR 1928 Cal 222 : 107 Ind. Cas. 79

Hon'ble Judges : Page, J;Graham, J

Bench : Division Bench

Judgement

Page, J.—The determination of this appeal depends upon the true construction of Order 21, Rule 29, Civil P.C. The question raised is one of first impression, for in none of the High Courts in India does it appear to have been considered or decided. Order 21, Rule 29 runs as follows:

Where a suit is pending-in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

2. The question to be determined is whether the words "until the pending suit has been decided" mean until a decree has been passed by the Court in which the suit is pending, or until the claim in the pending suit has finally been determined. The material facts are not in dispute.

3. The present appellants or their predecessors-in-title obtained a decree in the Court of the Subordinate Judge of Asansole against the respondent for Rs. 10,939-14-0 and costs on the 22nd March 1915. This decree was affirmed on appeal to the High Court on 14th January 1918. On the 18th April 1925 the appellants applied to the Subordinate Judge of Asansole for execution of the decree which they had obtained in the High Court on 14th January 1918 to the extent to which it had not already been satisfied. On the 29th August 1925, the learned Subordinate Judge of Asansole dismissed the appellants' application

upon the ground that it was barred by limitation. Against this order the appellant decree-holders have preferred the present appeal. The appeal is supported upon two grounds : (1) that the present application for execution must be treated as a continuation of a previous execution case (No. 101 of 1919); (ii) that an order under Order 21, Rule 29 staying the execution of the decree of 14th January 1918 had been passed by the learned Subordinate Judge of Asansole on the 14th April 1920; that the stay order remained in force until the 24th November 1924; and that, if the time during which the execution of the appellants' decree was stayed was excluded from the period during which limitation would run, the application for execution of the 18th April 1925 was not time barred.

4. Now, it appears that in the execution case No. 101 of 1919 (31st July 1919) Rs. 7,844-4-0 were realized in part satisfaction of the decree, and this case was dismissed on part satisfaction on 30th April 1920. On the 19th May 1920 the appellants again applied for execution of the decree in Case No. 129 of 1920, and on the 23rd June 1920 this execution case was dismissed for default. In these circumstances it cannot reasonably be contended that the application for execution of the 18th April 1925 was in continuation of the former execution cases which had been determined; and the first contention urged on behalf of the appellants, therefore, fails : *Raghunath Saha v. Lalji Singh* [1896] 23 Cal. 397; *Dukhiram Srimani v. Jogendra Chandra Sen* [1901] 5 C.W.N. 347. On the 14th April 1920, however, the learned Subordinate Judge of Anansole had passed the following stay order:

As it appears that the judgment-debtor Jogendra Lal Sirkar and others have instituted a suit for recovery of Rs. 8,170-16-6 for royalties against the decree-holders (in M. Suit No. 58 of 1918), on the petition of the judgment-debtors let the execution be stayed under Order 21, Rule 29.

5. The judgment-debtors' suit was decreed by the Subordinate Judge of Asansole on the 16th June 1920. Against that decree an appeal was lodged, and the judgment-debtors' claim against the decree-holders was finally determined by a decree of the learned District Judge of Burdwan of the 24th November 1924. By this decree the learned District Judge of Burdwan awarded the judgment-debtors a sum of Rs. 2,253-14-0 and costs.

6. Upon these facts the appellants urged that the stay order of the 14th April 1920 remained in force until the claim in the judgment-debtors' suit was finally decided by the decree of the learned District Judge of Burdwan of the 24th November 1924, and that if the time that elapsed between the 14th April 1920 and the 24th November 1924 is excluded from the period of limitation the present application for execution was presented within the time limited by the statute of limitation. On the other hand, the respondents contend that the stay order remained in force only while the judgment-debtors' suit was pending in the trial Court, and ceased to be operative after the decree was passed by the learned Subordinate Judge on the 16th June 1920. The adoption of the literal construction, for which the respondents contend, would provide an easy solution

of the problem. But, in my opinion, such a construction would render nugatory the two-fold object which, I think, the legislature had in view when enacting Order 21, Section 29, namely, to prevent : (1) the judgment-debtor being compelled to satisfy the decree by providing the sum due when it might be proved (after his claim against the decree-holder was finally determined) that on balance he owed the decree-holder less than the decretal sum or, it might be, nothing at all; (2) the multiplicity of execution proceedings. Now, it may well happen, after a stay order has been passed under Order 21, Rule 29, that the trial Court might dismiss the suit, while on appeal a sum might be decreed in favour of the judgment-debtor, and on a further appeal he might be awarded a sum larger than that for which the decree-holder had obtained his decree. In that event the result of adopting the construction which the respondents have urged upon us would be that both the objects which the legislature had in mind when enacting Order 21, Rule 29, would be defeated : on the other hand, if the view for which the appellants contend is accepted the decree-holder need suffer no hardship by reason of the delay necessarily incident to an appeal by the judgment-debtor, for under Rule 29, the executing Court is at liberty to grant a stay of execution upon whatever terms it thinks fit. There is no magic in the words "until the pending suit has been decided" for it is conceded by the learned advocate for the respondents that the executing Court in any case would have jurisdiction u/s 151 to grant a further stay if the judgment-debtor preferred an appeal. In my opinion, the words "until the pending suit has been decided" mean until the claim in the pending suit has finally been decided. The result, therefore, is that the application for leave to execute the decree of the 14th January 1918, that; was preferred on the 18th April 1925, was not barred by limitation ; the appeal will be allowed and the order under appeal set aside. It is represented to us that an appeal has been preferred to the. High Court from the order of the learned District Judge of Burdwan of the 24th November 1924. The execution proceedings will be returned to the learned Subordinate Judge of Asansole to be disposed of according to law. Whether the learned Subordinate Judge adjourns or dismisses or otherwise determines the present application for execution is a matter that must be left to the decision of the learned Subordinate Judge; and the costs of this appeal will abide the event; the hearing-fee is assessed at two gold mohurs.

Graham, J.

7. The sole question involved in the appeal is whether the application for execution was time barred or not, and the answer turns upon the proper construction Order 21, Rule 29, Civil P.C., and in particular upon the meaning of the words "pending suit has been decided" which occur therein. Do these words merely refer to the suit or do they include an appeal, if any, and mean "finally decided," that is to say, after all rights of appeal have been exhausted. If the former is the case then the plea, of limitation must prevail, while if the latter view is correct, then that plea fails.

8. The learned vakil for the respondents has called our attention to Order 22, Rule 11 whereby that order is made applicable to appeals as well as suits and has argued that from the fact that there is no similar provision in the case of Order 21, Rule 29 it may be inferred that the word "suit" in the latter rule was not intended to include "appeal." The word "suit" has not been defined in the Code, and it is possible to interpret it in two ways : either as restricted to the suit itself, or as meaning a suit from commencement until final decision, that is to say, as including the period of appeal, if any. On the whole I am of opinion that the better view is that the word was intended to include period of appeal and that "decided" means "finally decided." The adoption of the other view would entail multiplicity of proceedings which it has-always been the object of the legislatures to avoid.

9. For these reasons I agree with my learned brother that the appeal must be allowed.