

(1923) 01 BOM CK 0032
In the Bombay High Court

Maniram Peerchand Marwadi and Another	APPELLANT
Vs	
Vithu Ramji Patel Pande	RESPONDENT

Date of Decision : 19-01-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 41

Citation : AIR 1923 Bom 371 : 76 Ind. Cas. 549

Hon'ble Judges : Norman Macleod, C.J.;Crump, J

Bench : Division Bench

Judgement

Norman Macleod, C.J.—The decree in this case is a small cause decree and is ordinarily executable by that Court. In 1917 it was sought to be executed against the Immovable property of the defendants and so the darkhast was entered as a regular darkhast on the ordinary side of the Court. There might be a certain amount of confusion as the same Subordinate Judge was invested with Small Cause Court powers. But it was only as a Subordinate Judge and not as Small Cause Court Judge that he could execute the decree against Immovable property. The decree was transferred from one Court to the other. After the sale was held by the Collector and then amount realised was paid to the decree-holders, the darkhast was struck off, copy of the decree was taken back by the decree- holders and the result of the execution proceedings was entered in the Small Cause Suit Register. When the plaintiff sought again to execute the decree by the darkhast now before us, the Subordinate Judge held that the decree had been adjusted. The plaintiff was absent, and had chosen to remain absent even although time had been allowed to him. I should have thought that was only necessary then to dismiss the darkhast. But it was also held that the decretal debt had been satisfied by adjustment.

2. In appeal the first question was, whether the appeal was competent, as there was no appeal against the order of the Small Cause Court Judge. It was argued that the decree was still with the Subordinate Judge because the Subordinate Judge had not certified to the Small Cause Court Judge the fact of the previous

execution. Section 41 of the CPC merely directs that the Court to which a decree is sent for execution shall certify to the Court which passed it, the fact if such execution, or where the former Court fails to execute the same, the circumstances attending the failure. No particular method is prescribed for certifying the fact of execution and all that that section means is, that the Court to which the decree is sent for execution should inform the Court which passed the decree what has happened in execution and, as we find that the result of the execution proceedings was entered in the Small Cause Suits Register, I think the requirements of Section 41 have clearly been satisfied and the decree must be taken to have been returned to the Small Cause Court Judge. There is no appeal, therefore, against this decision dismissing the darkhast. This appeal will, therefore, be dismissed.

Crump, J.

3. As I understand this matter, we are asked to hold that where the Subordinate Judge is invested with Small Cause Court powers and where, in the exercise of the latter jurisdiction, he makes a decree and that decree comes before him for execution in the exercise of his ordinary jurisdiction, then Section 41 of the CPC comes into play and he is bound to certify as Subordinate Judge to himself as a Small Cause Court Judge the fact of such execution, or where there is a failure to execute the decree the circumstances attending such failure. It is quite clear that in such a case it is impossible, to apply Section 41 strictly because that section clearly had in contemplation different Courts, and not different branches of one Court presided over by the same individual. All that is necessary is, that there should be sufficient compliance with what the section really requires and that is that one side of the Court should be made aware of that which has been done upon the other, and it is perfectly clear in the present case that that was done by the entry which was made in the Small Cause Suit Register. It seems to me, therefore, that the point which has been made before us possesses no substance, and that the decisions which have been cited are not really applicable to the peculiar facts of this case. I agree, therefore, that the appeal should be dismissed.