

(1918) 01 CAL CK 0019
In the Calcutta High Court

Midnapore Zemindary Co., Limited

APPELLANT

Vs

Dina Nath Sahu and Others

RESPONDENT

Date of Decision : 25-01-1918

Acts Referred:

Citation : 45 Ind. Cas. 712

Hon'ble Judges : Walmsley, J;Richardson, J

Bench : Division Bench

Judgement

1. This appeal arises out of proceedings in execution of a rent decree and the question for determination is whether an application for execution of the decree, is or is not out of time. An application for execution of a rent decree must be made within the period limited by Clause (6) of Schedule III of the Bengal Tenancy Act. For the present purpose that period is 3 years from the date of the decree, which was made on the 14th June 1911. The relevant dates are as follows; The first application for execution was made on the 6th March 1914; on the 25th April of the same year the property of the judgment-debtor was sold by the Court. On the 23rd June following the judgment-debtor applied to have the sale set aside and on the 16th September the sale was set aside. On the 28th September the Court made this order: Sale set aside, decree-holder taking no further steps, case dismissed for default." The decree-holder appealed from the order setting aside the sale. It does not appear whether the appeal was filed before or after the 28th September but the appeal was dismissed on the 2nd January 1915. The decree-holder took no further step for over a year. Then on the 16th February 1916 he made the application to which the appeal relates. The Courts below have held that the application is out of time, because it was made more than three years after the date of the decree.

2. It is contended, however, for the decree-holder that this application is merely a continuation of his previous application of the 6th March 1914. His learned Pleader relies on the case of Abdul Khayar Abdul Haque v. Reazuddin Ahmad Chowdhury 1 Ind. Cas. 341 : 13 C.W.N. 521. and if it were not for the order of

the 28th September 1914 dismissing the previous application for default there might be something to be said in decree-holder's favour. But there is that order on the record It is not a mere order striking a case off the file for the convenience of the Court. It is an order by which the decree holder was bound. He took no steps by way of review to have the order set aside or modified and he waited for more than a year before he name into Court with his present application. In my opinion the previous application ended with the order of the 28th September 1914, and in that view there can be no continuity between the previous application and the present application. I agree with the conclusion arrived at by the Courts below and would dismiss this appeal with costs, one gold mohur.

3. Walmsley, J.--I agree.