

(1936) 04 CAL CK 0029
In the Calcutta High Court

Naokhila Loan Co., Ltd.

APPELLANT

Vs

Hemendra Narayan Roy

RESPONDENT

Date of Decision : 06-04-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1936 Cal 402 : 166 Ind. Cas. 815

Judgement

1. This appeal has arisen out of an application u/s 47, Civil P. C., made by the appellant, raising objections to the execution of a decree obtained by the respondent on 3rd February 1933, in respect of the money deposited with the appellant, the Naokhila Loan Co., Ltd. The case of the appellant was that having regard to the scheme of arrangement sanctioned by this Court on 27th March 1933, under the provisions of the Companies Act, the application for execution as made by the decree-holder was not maintainable. The application u/s 47, Civil P. C., raising the objections aforesaid was resisted by the decreeholder, respondent in this Court, on the ground that he was not bound by a scheme which was passed at a meeting of the depositors after he had obtained the decree, and a scheme which was sanctioned by this Court subsequently. It is not disputed that the decree sought to be executed in the case before us was obtained before the scheme was adopted at a meeting of the depositors, of which notice was given to the respondent after he had obtained the decree. The Court of execution gave its decision against the appellant on the ground that as the respondent had ceased to be a depositor by obtaining a decree before the scheme was adopted at a meeting of the depositors, he was not bound by the scheme. The application u/s 47, Civil P. C. was dismissed by the Court below.

2. It was urged in support of the appeal that the Court below should have held that in view of the scheme of arrangement u/s 153, Companies Act, sanctioned by the Court, the respondent was not entitled to proceed with execution of his decree against the appellant company. On the materials on the record in the case before us we are unable to give effect to this contention. In our judgment the scheme as passed at the meeting of the depositors on 22nd March 1933, and

sanctioned by this Court on 27th March 1933 which gave effect to the resolution carried at the meeting of the depositors held after the respondent had obtained the decree and put that into execution, related to distribution of the available funds among the depositors who were to be deemed as creditors pro rata. On a proper construction of the scheme as it stands, and considering the same in the light of the materials placed before us, the scheme could not possibly be held to apply to the depositor who had obtained a decree. The appeal is accordingly dismissed with costs. The hearing fee in this Court is assessed at three gold mohurs.