
(1921) 06 CAL CK 0012
In the Calcutta High Court
Case No : APP. No. 355 of 1920

Paresh Nath Pal Choudhury and others APPELLANT
Vs
Ismail Sardar and others RESPONDENT

Date of Decision : 13-06-1921

Acts Referred:

Citation : (1921) 06 CAL CK 0012

Judgement

1. The question involved in the appeal is whether the application for execution of a decree is barred by limitation.
2. The decree was one for rent and the amount for which it was passed was less than Rs. 500. It was dated the 27th January, 1916.
3. The present application for execution was made on the 28th March, 1919, i.e., more than three years from the date of the decree. The decree holder however, relied upon certain acknowledgments of liability within three years of the date of the decree, and the Court of first instance held that such acknowledgments saved limitation.
4. On appeal the learned District Judge held that S. 19 of the Limitation Act was inapplicable to the case as it was a decree for rent which is governed by the special limitation prescribed by Art. 6, Sch. III of the Bengal Tenancy Act.
5. There is no doubt that under Art. 6 Sch. III of the Bengal Tenancy Act, the period of limitation is three years from the date of the decree, and S. 184 of that Act lays down that any application made after the period of limitation prescribed in Sch. III annexed to the Act shall be dismissed although limitation has not been pleaded.
6. S. 185, sub S. (1) lays down that Ss. 7, 8 and 9 of the Limitation Act, 1877, shall not apply to the suits and applications mentioned in S. 184.
7. Sub-S. (2), however, provides that "subject to the provisions of this chapter, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals

and applications mentioned in the last foregoing section."

8. Under that sub-section therefore, it appears that S. 19 of the Limitation Act would apply to a decree for rent.

9. Art. 6, Sch. III of the Bengal Tenancy Act provides that where the judgment-debtor has by fraud or force prevented the execution of the decree, the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877 but it does not follow that in cases where there is force or fraud the general provisions of the Indian Limitation Act (other than those mentioned in the S. 185 (1) of the Bengal Tenancy Act,) will not apply. The article merely says that the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877.

10. The question appears to have been considered in the case of Harihar Lal v. Gunender Pershad (1905) 9 C.W.N. 1025. The learned Judges held that an acknowledgment of liability, under S. 19 of the Limitation Act made by a judgment-debtor, in respect of the decree holder's right to execute a rent decree gives the decree holder a fresh starting point for counting the period of limitation prescribed by Art. 6 of Sch. III of the Bengal Tenancy Act.

11. It is contended on behalf of the appellant that, if the decree-holder is allowed a fresh starting point for limitation for the execution of a rent decree from the date of acknowledgment under S. 19 of the Indian Limitation Act, it would affect or alter the period of limitation prescribed by Art. 6 of the Bengal Tenancy Act.

12. As pointed out by the learned Judges in the case cited above, "the answer to this would seem to be that the acknowledgment under S. 19 does not affect or alter the period of limitation so prescribed, though it may seem practically to do so, but only gives the decree-holder a fresh starting point for counting the period prescribed by Art. 6, Sch. III of the Bengal Tenancy Act which the judgment debtor has himself given him by petitions containing the acknowledgements of his debt.

13. We are accordingly of opinion that S. 19 of the Limitation Act applies to such a case.

14. It is contended on behalf of the respondent that there was no acknowledgment of liability within the meaning of S. 19 of the Limitation Act.

15. It appears, however that the judgment-debtor expressly admitted that there was an instalment decree in favour of the decree-holder, that several installments had already been paid, that the instalment for Pous remained unpaid but as it had not become due, the decree-holder could not proceed with the execution. That was a sufficient acknowledgment within the meaning of the section.

16. It is contended that the admission should be confined to the actual amount payable for the Pous instalment. But there was an acknowledgment of liability

under the decree and that we think, is sufficient for the purpose of the section.

17. The result is that the order of the lower Appellate Court is set aside and that of the Court of first instance restored with costs here and of the lower Appellate Court, the costs in this Court being assessed at one gold mohur.

18. The execution of the decree will be proceeded with.