
(1919) 06 PAT CK 0018
In the Patna High Court

Raja Wazir Narain Singh

APPELLANT

Vs

Rani Jagadamba Kueri

RESPONDENT

Date of Decision : 02-06-1919

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 476

Citation : 52 Ind. Cas. 407

Hon'ble Judges : Mullick, J;Jwala Prasad, J

Bench : Division Bench

Judgement

Mullick, J.—This is an application for review of an order made by us on the 8th of April last, appointing Raja Wazir Narain Singh Receiver of the estate which is the subject-matter of an appeal now pending before their Lordships of the Privy Council.

2. The history of the case is as follows:

The Raja sued Rani Jagadamba Kueri for possession not only of the estate, but of certain Government promissory notes which were in deposit in the Bank of Bengal to her credit. The Rani succeeded as regards the promissory notes, but with regard to the corpus of the property the Raja obtained a decree declaring his title and for possession. In accordance therewith he has taken possession of the estate.

3. The Rani then applied for leave to appeal against that decree to His Majesty in Council. Permission was granted in accordance with Order XLV of the Civil Procedure Code, but as the Rani failed to comply with certain orders of the Court, it was directed that the proceedings should be stayed. The Rani subsequently moved their Lordships of the Privy Council and obtained an order directing that the appeal should proceed. The appeal [has been entered as No. 13 of 1919 and the necessary papers are under preparation.

4. On the 28th of March last the Rani applied to this Court for the appointment of a Receiver, on the allegation that the Raja had been guilty of waste and that

irreparable injury would be caused if some measures for the protection of the property were not taken. Notice of this application was served by Mr. Sushil Madhab Mullick upon Mr. Bankim Chandra De, the Vakil of the Raja. On the 8th April the matter came up for hearing, and, although the Raja was not. himself present, Mr. Naresh Chandra Sinha was heard in his behalf and an order was made appointing the Raja Receiver of the estate upon his furnishing security to the extent of Rs. 1,00,000, time for that purpose being allowed till the 8th of May.

5. On the 15th April the present application was made by the Raja for a review of the order appointing him Receiver. His principal ground is that he was entirely ignorant of the application of the 28th March, and that the order of the 8th April was made without any opportunity being given to him to furnish counter-affidavits traversing the allegations made by the Rani.

6. Now we have had the advantage of hearing a statement by Mr. Bankim Chandra De upon the allegations contained in the affidavits now filed by the Raja and by his agent Trebani Lal and dated the 14th April 1919, and we find the facts to be these.

7. About the 25th of March the Raja and Trebani Lal were both at Bankipore in connection with some other business, and when Mr. Sushil Madhab Mullick intimated to Mr. Bankim Chandra De his intention of making an application for the appointment of a Receiver that fact was communicated by the latter to Trebani Lal. Upon instructions received from Trebani Lal Mr. Bankim Chandra De accepted service of notice of the application, and on the 28th March he received a vakalatnama from the Raja to act in the matter in his behalf. On the 28th of March Trebani Lal was present in Court from the opening of the Court till about half past one awaiting the bearing of the application. The application was, however, not made till about 2 p. m. It is not clear whether at that time Trebani Lal was actually present in Court, but there can be no doubt that he was fully aware, and had been aware, of the intention of the Hani's advisers to make the application in Court on that day. Mr. Bankim Chandra De further states that the same evening after the Court had ordered notice of the application to issue he saw the Raja at about 7 p. m. and informed him that the application had been made and that it would be necessary to file counter affidavits in reply; so that there can be no possible doubt that on the 28th March the Raja was fully aware that an application had been made for the appointment of a Receiver. The Raja took no further steps, and on the 8th April Mr. Naresh Chandra Sinha, who had acted in the appeal at an early stage, was heard by us under instructions from Mr. Bankim Chandra De. In these circumstances it is idle to say that the Raja had no opportunity of making himself heard in the matter of the application. The omission to appear was wilful, and we cannot admit that any ground has been shown for our reviewing our judgment of the 8th April appointing him Receiver.

8. A point of law has been raised by Mr. Haribhusan Mukherji, who now appears for the Raja, to the effect that as it was necessary to obtain a special order from their Lordships of the Privy Council for the appeal to proceed, the appointment of

a Receiver cannot be made by this Court. Reliance is placed upon the case of Tega Singh v. Bichitru Singh 4 Ind. Cas. 452 : 10 C.L.T. 326 which, following the earlier case of Moheshchandra Dhal v. Satrugan Dhal 26 I.A. 281 : 27 C. 1 : 4 C.W.N. 34 : 7 P.C.J. 567 : 14 Ind. Dec. 1 (P.C.), decided that u/s 608 of the Code of 1882 as well as under Order XLV, rule 13, of the Code of 1908, it was not open to the High Court to appoint a Receiver in a case in which the certificate was not granted by the Court. The case of Nityamani Dasi v. Madhu Sudan Sen 11 Ind. Cas. 384 : 38 C. 335 : 13 C.L. 529 : 8 A.L.J. 449 : 13 Bom. L.R. 419 : 10 M.L.T. 25 : (1911) 2. M.W.N. 124 : 4 Bur. L.T. 123 : 38 I.A. 74 (P.C.), however, is direct authority to the contrary, Their Lordships of the Privy Council have there laid down that it is open to the High Court to stay execution notwithstanding that the appeal has been admitted by special leave by His Majesty in Council. The argument in the High Court in Nityamani's case 11 Ind. Cas. 384 : 38 C. 335 : 13 C.L. 529 : 8 A.L.J. 449 : 13 Bom. L.R. 419 : 10 M.L.T. 25 : (1911) 2. M.W.N. 124 : 4 Bur. L.T. 123 : 38 I.A. 74 (P.C.) was that the provisions of Order XLV, Rule 13, of the Code of 1908 are wider than Section 608 of the previous Code, and it would seem that their Lordships of the Privy Council accepted this view.

9. If, therefore, it is open to the High Court to stay execution under Order XLV, Rule 13, in a case in which special leave has been given, I fail to see why there is no jurisdiction to give the relief which is set out in the very next clause of Rule 13 (d). On principle the argument that applied to the stay of execution must apply to this case also. The preliminary point, therefore, that we have no jurisdiction to appoint a Receiver in my opinion fails. The result is that the application for review will be rejected, and the order appointing the Raja as Receiver upon his furnishing security to the extent of Rs. 1,00,000 will be affirmed. The opposite party, the Rani, will be allowed her costs. The time for furnishing the security will be extended till the 16th instant. In default the legal advisers of the Rani will be at liberty to make an application for the appointment of some other person.

10. We cannot leave the case here, and it will be necessary to issue notice upon the Raja and upon Trebani Lal to show cause why proceedings should not be taken against them u/s 476 of the Code of Criminal Procedure in the matter of allegations made by them in their affidavits of the 14th April 1919. The 16th instant will be fixed for the hearing of this matter.

Jwala Prasad, J.

11. I agree.