
(1922) 02 CAL CK 0038
In the Calcutta High Court

Rajakoti Kumar Mukerji

APPELLANT

Vs

Tincowri Chakraborti and Others

RESPONDENT

Date of Decision : 20-02-1922

Acts Referred:

Citation : AIR 1922 Cal 136 : 70 Ind. Cas. 293

Hon'ble Judges : Greaves, J;B.B. Ghose, J

Bench : Division Bench

Judgement

1. This is an appeal by the judgment-debtor. He, as plaintiff, in March 1908 sued and obtained a decree in a suit against the respondent. On the 13th August 1910 an appeal was preferred to the District Judge. He affirmed the decision of the Munsif. Against this an appeal was preferred to this Court. On the 6th March 1913 this Court reversed the decision of the District Judge and of the Munsif and dismissed the suit and allowed the defendants in the suit the costs throughout as against the plaintiff who is the present appellant before us and on the 30th April 1915 the decision of the learned Judge was affirmed in a letters Patent Appeal. The decree of the High Court allowed the defendants in the original suit the cost of the appeal to the High Court and the costs before the Munsif and the District Judge. I understood that the costs of the defendants before the District Judge and before the Munsif had been taxed or assessed in those Courts but that, owing to an omission, they had not been inserted in the decree of either Court. Therefore, if the defendants were desirous as they were of executing in full the decree passed in their favour by this Court for costs, it was necessary for them to obtain information with regard to the amount of the costs to which they were entitled in the First Court and in the Court of the District Judge. Then what they did was this: On the 3rd September 1917 they applied to the District Judge to supply the omission in the decrees of both the Courts with regard to costs. On the 1st October 1917 the application was allowed, and the amount of costs of both Courts was inserted. On the 11th February 1920, the original defendants applied for execution of the decree of the High Court. Both the Courts, below have held that the costs awarded by the High Court decree so far as regards the

proceedings in this Court Were concerned, were barred by limitation, but they allowed execution in respect of the costs both before the Munsif and before the District Judge holding that the, time ran from the 1st October 1917, and it is in respect of this that the judgment-debtor now appeals to us. There is no cross-appeal to this Court.

2. Now, first of all it is said on behalf of the appellant that the District Judge had no jurisdiction to make the amendment which he has done and that the only Court which could have made the amendment was this Court and the only decree capable of execution was the decree of the 6th March 1913 which was affirmed in the letters Patent Appeal. We have been referred in support of the contention raised before us by the appellant to three decisions. The first of them is the case of Sri Gobind Singh v. Gangatri Pershad Singh 6 C.L.J 542 and the other two were the cases of Rameswar Malia v. Bhaba Sundari Debi 5 Ind. Cas. 304 : 11 C.L.J. 81 and Aghora Kumar Ganguli v. Mahomed Musa 5 Ind. Cas. 723 : 11 C.L.J. 155. These are decisions which support the contentions of the appellant that the District Judge was acting ultra vires in amending the decree, but it does not seem to us if we examine facts of this case that the District Judge really amended the decree. It was necessary, after the decision of this Court, to obtain certain information which was in existence and it was in fact this information which was obtained on the 1st October 1917. We accordingly think that limitation did not commence to run until the 1st October 1917 when information necessary to execute the High Court's decree had been obtained and that decree was, as seems to us, for the first time then capable of execution. It has been argued that, even apart from this information, the decree might have been executed in respect of the costs allowed in the proceedings in this, Court, but it seems to us that treating the matter broadly you could not say that the decree of this Court was really capable of execution until the information had been obtained which was necessary to complete it. This being so, we think that no question of ultra vires action arises, and what the Judge did was not really in effect and substance to amend the decree. So far as limitation is concerned this question does not arise. As already stated, the decree of this Court was not capable of execution until the 1st October 1917. We agree, moreover, in what has been said in the judgment of the Court below, namely, that the Executing Court was not the Court to decide as to whether the so-called amendment was ultra vires.

3. In the result this appeal fails and is dismissed with costs. We assess the heating fee at two gold mohurs.