
(1877) 03 AHC CK 0002
In the Allahabad High Court

Ramanand

APPELLANT

Vs

The Bank of Bengal

RESPONDENT

Date of Decision : 24-03-1877

Acts Referred:

Citation : (1875) ILR (All) 377

Hon'ble Judges : Robert Stuart, C.J.; Oldfield, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is a miscellaneous regular appeal from an order made by the Subordinate Judge of Cawnpore in execution of a decree, and a preliminary objection is taken by the respondent's counsel that the appeal cannot be heard inasmuch as no appeal lies from such an order.

2. The circumstances appear to be these. The judgment-debtor, being indebted to the Bank of Bengal in a very considerable sum, upwards of Rs. 76,000, made an agreement for the liquidation of the debt u/s 52 of Act XX of 1866* which agreement was duly registered. It is here to be observed that although that Act was repealed by Act VIII of 1871, the procedure for such cases as the present is thereby expressly saved and is provided by the subsequent Sections 53, 54 and 55 of the Act. u/s 53 of that Act the Bank obtained a decree against the judgment-debtor, and as that section provides that such a decree may be enforced forthwith under the provisions for the enforcement of decrees contained in the Code of Civil Procedure, he was arrested under a warrant issued pursuant to Section 273 of Act VIII of 1859+ in execution of the decree, and on the 23rd of October 1876, he applied for his discharge u/s 8 of Act XXIII of 1859++. Subsequently the Bank were called upon to show cause, on the 4th November 1876, why they should not proceed against their judgment-debtor's property and he himself be discharged, and such cause having been shown to the satisfaction of the Court, the judgment-debtor's application was refused, and he himself sent back to prison. Against this order, the present appeal has been

preferred

3. Section 55 of the Act of 1866 expressly provides that "there shall be no appeal against any decree or order made under Sections 53, 54, or this section." It would thus appear that the preliminary objection taken at the hearing of this appeal was well founded. The respondent's counsel in support of his objection referred to two Calcutta cases respectively *Petition of Pearee Lal Sahoo* 7 W.S. 130 : 17 W.R. 512. But to my mind the law is too clear to admit of any doubt on the subject, and it is quite unnecessary to refer to any other rulings. The objection is, therefore, allowed, and the appeal is dismissed with costs.

Oldfield, J.

4. I concur in the proposed order.

-----Foot Note-----

*[Section 52: Whenever the obligor and obligee of an obligation shall agree that in the event of the obligation not being duly satisfied, the amount secured Record of agreement that thereby may be recovered in a summary way, and shall at the time amount secured by an of registering the said obligation apply to the Registering Officer obligation may be recovered to record the said agreement, the Registering Officer, after summarily. making such enquiries as ho may think proper shall record such agreement at the foot of the endorsement and certificate required by Sections 66, and 68, and such record shall be signed by him and by the obligor, and shall be copied into the Register Book No. 1 or No. 6, as the ease may be, and shall be prima facie evidence of the said agreement.]

+ [Section 273: Any person arrested under a warrant in execution of a decree for money may, On what grounds appli- on being brought before the Court, apply for his discharge on cation for discharge may. the ground that he has no present moans of paying the debt, be made. either wholly, or in part, or, if possessed of any property, that he is willing to place whatever property he prossesses at the disoposal of the Court. The application shall contain a full From of application. account of all property, of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family and necessary implements of his trade), and of the places respectively where such property is to be found, or shall state that with the exception above mentioned, the applicant is not possessed of any property and the applica- verification tion shall be subscribed and verified by the applicant in the manner hereinbefore prescribed for subscribing and verifying plaints. [Ammended and supplemented by Act XXIII, 1861, Section 8.]

++ [Section 8: When a person arrested under a warrant in execution of a decree for money shall, on being brought before the Court, apply for his discharge Procedure on application on either of the grounds mentioned in Section 273 of

Act VIII for discharge by a person of 1859, the Court shall examine the applicant in the presence of arrested in execution of a the plaintiff or his pleader, as to his then circumstances, decree for money. and as to his future means of payment, and shall call upon the plaintiff to show cause why he does not proceed against any property of which the defendant is possessed, and why the defendant should not be discharged; and should the plaintiff fail to show such cause, the Court may direct the discharge of the defendant from custody. Pending any enquiry which the Court may consider it neces- sary to make into the allegations of either party, the Court may leave the defendant in the custody of the Officer of the Court to whom the service of the warrant was entrusted, on the defendant depositing the fees of such Officer, which shall be at the same time daily rate as the lowest rate charged in the same Court for serving process; or if the defendant furnish good and sufficient security for his appearance at any time when called upon while such enquiry is being made, his surety or sureties undertaking in default of such appearance to pay the amount mentioned in the warrant, the Court may release the defendant on such security.]