

(1927) 08 CAL CK 0012
In the Calcutta High Court

Salam Chand Kannyaram

APPELLANT

Vs

Joogul Kissore Ramdeo

RESPONDENT

Date of Decision : 25-08-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 136

Citation : AIR 1928 Cal 462

Hon'ble Judges : Rankin, C.J.;Mitter, J

Bench : Full Bench

Judgement

Rankin, C.J.—In this case an order was made on 26th August 1925 appointing a Receiver and directing that the defendant firm do make over to the Receiver the books of account of their firm for a certain year and the hatchittas standing in the benami name of one Ramdeo's brother Baij Nath Motilal and those executed by various debtors of the defendant firm in acknowledgment of their debts. It was further ordered that the defendant firm do makeover to the Receiver or to this Court to be placed to the credit of the suit all moneys realized by them in contravention of a certain order. By another order made on 5th July 1926, it was ordered that the Official Receiver be appointed Receiver in the suit under the order already mentioned and that the said Ramdeo do stand committed to the custody of the Superintendent of the Presidency Jail for contempt of Court for having failed to make over to the said Receiver the hatchittas mentioned in para. 22 of the said petition and that a warrant do issue directed to the Sheriff of Calcutta and to the Superintendent of the Presidency Jail commanding the Sheriff to arrest the said Ramdeo wherever he may be found within the local limits of the jurisdiction of this Court and to convey him to the said jail.

2. It appears that Ramdeo was not within the limits of the ordinary civil jurisdiction of the Court but was residing and staying within the District of Nadia in this Province. Accordingly the warrant directed to the Sheriff failed to take effect. In consequence of this the application which is now before us was launched on 31st March 1927, and it asks the learned Judge on the original side

for an order directing the District Judge of Nadia to execute the said warrant, seize the person of the defendant wherever found within the said district and convey it to the Sheriff of Calcutta to be by him conveyed over to the Superintendent of the Presidency Jail.

3. The learned Judge, Mr. Justice Gregory dismissed this application not being satisfied that he had any jurisdiction to make such an order. It would appear from the minutes of the proceedings before him that Section 136, Civil P.C., was relied upon by the applicants and that the applicants also claimed to be entitled to the exercise of the inherent powers of the Court and also to powers u/s 151 of the Code. Section 36, Civil P.C., was also referred to.

4. Mr. S.N. Banerji has argued upon this appeal that Sections 36 and 136 must between them cover this case. It is necessary therefore to observe that any order for arrest for contempt of Court committed by breach of an injunction or by defiance of the Court's Receiver may be regarded in the High Court in different ways. In so far as the order is made not under the Code but as an order for contempt of a Court of record that is one thing. In so far as the order is made under provision of the Code that is another thing. Viewed merely as an order in the exercise of the Court's inherent jurisdiction to punish for contempt I am not of opinion that it is made out that any such order as is here asked for can be made by this Court. There can be no doubt, as it seems to me, that for the purposes of execution of decrees and orders the ordinary original jurisdiction is confined within the local limits of Calcutta. The question of the Court's power derived from the old Supreme Court to arrest for contempt of Court a person in the mofussil have not been argued before us and I make no pronouncement with regard to them. There can be no doubt that this Court on its appellate side in a case arising in the mofussil would have the power to make such an order as is here asked for. That on its original side the Judge would have any right to direct the District Judge of Nadia to execute a warrant of arrest for contempt is a proposition which I doubt extremely. That matter, however, need not be further discussed. It has to be observed that this question is one which might arise just as easily in a mofussil Court as in the High Court. Any mofussil Court may appoint a Receiver and if a person residing outside its jurisdiction interferes with the Receiver then the same problem arises as arises here. In my judgment it is eminently desirable to proceed regularly under the Code so far as possible. It is trite law that the appointment of a Receiver so far as regards parties bound by the order operates against them as an injunction. It is an injunction necessarily against interference with the Court's Receiver whether by withholding possession or property or otherwise Under the Code permanent injunctions are enforced in execution, but under Order 39 interlocutory injunctions are enforced under a special power which is given to Courts in the mofussil as well as to the High Court notwithstanding that such Courts have no inherent right of arrest for contempt. The provision is contained in Rule 2 of Order 39 where it says:

In case of disobedience, or of breach of any such terms, the Court granting an

injunction, may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding six months.

5. It seems to me that instead of appealing to this Court the applicants here would have been better advised to make a fresh application to the learned Judge on the original side asking for an injunction in express terms. In case of breach of that injunction an order could be made under Order 39, Rule 2 directing the arrest and detention of the offender. In that case there would be no difficulty in holding that Section 136, Civil P.C., would apply. This Court would have a statutory right to make the kind of order which is now asked for. If there be any objection to this course and after all it is no part of the duty of this Court to give advice to these appellants, then these appellants must discover some other method of procedure for themselves. In the case of *Rajah of Ramnad v. Seetharam Chetty* [1903] 26 Mad. 120, it was held that the High Court on its original side could not execute decrees by arrest outside its territorial limits; but there are observations which would appear to distinguish the case of arrest for contempt on the ground that is in its nature a criminal matter. Accordingly the same reasoning may not apply in such a case. But apart altogether from any question of jurisdiction it has to be remembered that there is a question of machinery to be considered and as the Sheriff of Calcutta no longer functions outside the limits of the ordinary civil jurisdiction of this Court grave difficulties arise if it be attempted in any way to exercise criminal jurisdiction by this summary proceeding over a person in the mofussil. That, however, was not touched upon in the arguments before us and it is a question upon which it is not necessary now to pronounce any opinion.

6. In my opinion this appeal must be dismissed. We make no order as to costs.

Mitter, J.

7. I agree.