

(1901) 06 CAL CK 0020
In the Calcutta High Court
Case No : Rule No. 675 of 1901

Sarup Ganjan Singh Bhuyan

APPELLANT

Vs

Robert Watson and Co., Ltd.

RESPONDENT

Date of Decision : 18-06-1901

Acts Referred:

Citation : (1901) 06 CAL CK 0020

Judgement

1. A rule was issued on the decree-holders to show cause why the order of the Deputy Collector of Bara Bazar in the District of Manbhum, dated the 29th December 1900, and all the proceedings in execution case No. 148 of 1900 should not be set aside. The decree-holders having obtained a decree for 14 1/4 annas for arrears of rent and costs on the 12th January 1892, applied for execution on the 10th March 1892. That application was dismissed on the ground of informality on the 30th June 1892, and no further application for execution was made until the 18th May 1900.

2. Meantime on the 19th April 1892 the judgment-debtor had instituted a suit to set aside a certain document on which the aforesaid rent-decree was based, and on the 9th August 1892 the plaint was amended so as to include a prayer to set aside the rent-decree itself. On the 1st July 1893 a temporary injunction was issued restraining, the decree-holders from executing their decree pending the decision of the said suit.

3. On the 28th February 1894 that suit was decreed in the Plaintiff's favour, and the temporary injunction was converted into a permanent one. On appeal that decree was set aside and the injunction was discharged on the 20th May 1897. The Deputy Collector was of opinion that the rent-decree was revived from this latter date, and that as the decree-holders' application of the 18th May 1900 was within three years of that date, it was not barred.

4. The case is governed by Act X of 1859 with special reference to sec. 92 of that Act.

5. Having regard to the rulings in *Golokemoney v. Mohesh Chunder* ILR 3 Cal. 547 (1877) and *Rhedoy Krishna Ghose v. Koylask Chunder Bose* 13 W.R. (F.B.) 3 (1869) the decree-holders would be in time if their application of the 18th May 1900 could be regarded as a continuation of the proceedings initiated by them on the 10th March 1892, or in other words as merely a step taken in furtherance of the execution for which they had formerly applied. As a matter of fact the suit brought by the judgment-debtors did not interrupt and keep in abeyance any pending execution proceedings, for those proceedings had already been dismissed on the 30th June 1892.

6. There is no authority for the proposition that the decree-holders are entitled to a fresh starting point from the 20th May 1897, and may execute their decree at any time within three years of that date, wholly ignoring the fact that they had already had some 17 or 18 months before issue of the injunction during which they might have executed their decree. The rule must, therefore, be made absolute, but under the circumstances we direct that each party pay his own costs.