

(1896) 03 CAL CK 0014
In the Calcutta High Court

Tarak Chunder Sen

APPELLANT

Vs

Gyanada Sundari

RESPONDENT

Date of Decision : 10-03-1896

Acts Referred:

Citation : (1896) ILR (Cal) 817

Hon'ble Judges : W. Combe Petheram, C.J.; Rampini, J

Bench : Division Bench

Judgement

W. Combe Petheram, C.J. and Rampini, J.—The question we have to consider is whether an application made by the decree-holder, the respondent in this appeal, on the 16th of March 1891, was an application in accordance with law to the proper Court to take some step in aid of the execution of the decree. The application was contained in a petition, the translation of which has been made by the pleader for the appellant and verified by Mr. Justice Rampini. It is as follows:

Execution case No. 168 of 1890. Before Babu Parbutty Kumar Mitra, Ray Bahadur, Subordinate Judge, Zilla Dacca. Shoshi Kumar Sarkar, decree-holder v. Taruck Chunder Sen, judgment-debtor. Petition on behalf of decree-holder to the following effect.

In the above execution case order has been passed upon the Nazir to proceed and attach the moveable properties of the judgment-debtor. But the judgment-debtor, having become aware of this, has removed his properties. Besides no person on behalf of the decree-holder has arrived here as yet; consequently, the travelling allowance of the Nazir has not been deposited. It is, therefore, prayed that u/s 373 of the CPC permission be given to withdraw the execution with liberty to take out execution again, or that after fixing some date after the 20th April for the hearing, an order be passed for the issue of process of attachment, or that order be passed for depositing hereafter the travelling allowance of the Nazir. Be it known that the sum of Rs. 2 is already in deposit as fee for process of attachment. It is prayed that (execution) be allowed to be withdrawn with

permission to take out attachment with that fee, when execution is applied for hereafter; and the date of hearing has been fixed for the 20th March.

2. Upon this petition the Court on the 19th of March 1891 made this order:

The decree-holder has this day prayed to be allowed to withdraw the case with liberty to take out execution again. Case disposed of. The decree-holder may make a fresh application.

3. The present application was made on the 16th of March 1894.

4. It is said that even if the application to withdraw the pending proceeding for execution with leave to institute another at some future time were not an application to take a step in aid of execution, the petition of March 16th, 1891, contained other prayers; but we think that an examination of the petition itself shows that it was really nothing but a petition for leave to withdraw the pending proceeding, and even if the written petition were wide enough to enable the decree-holder to ask for some other relief under it, it is certain from the order of March 19th that the only relief which the Court was actually asked to grant was leave to withdraw the pending proceeding with leave to institute another at some future time.

5. The most favourable way in which the position may be described for the decree-holder is to say that the application of the 16th of March 1891 was an application for further time to proceed with the pending execution proceeding, and then the question is whether, if the Court made an order granting the further time asked, such an order is a step in aid of the execution. It is not necessary to do more than state the proposition to see that it is not under the Civil Procedure Code. Decrees are executed by the Court; on the application of the parties and a step in aid of execution means a step taken by the Court towards executing the decree. The mere granting of further time to make an application or to deposit money cannot be said to be such a step, as the taking of it does not assist the Court in executing the decree or advance the execution proceeding in any way. For these reasons we think that the order cannot be sustained, and the appeal must be allowed, and the application of the 16th of March 1894 to execute the decree, dismissed with costs in all Courts.

6. We have been referred to the case of *Ram Narain Rai v. Buhhtu Kuar* ILR 16 All. 75, but that is not a decision of this Court, nor is it binding on us. As we are unable to agree with the reasoning of the learned Judge by whom it was decided, we are compelled to decline to follow it.