

In Re: the Petition of Radhi

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Court : Mumbai

Decided On : Sep-22-1887

Reported in : (1888)ILR12Bom228

Judge : Charles Sargent, C.J. and ;Nanabhai Haridds, J.

Appellant : In Re: the Petition of Radhi

Judgement :

Charles Sargent, C.J.

1. The application by Radhi to be released from prison was virtually an application for review of the order for her imprisonment, on the ground that it was contrary to law. Two objections were taken to this application by the judgment-creditor. First, that Radhi should have taken the objection when she was arrested and brought before the Judge, and that not having done so, it is now too late; but her mere omission to do so cannot, as it was contended by the opponent, be regarded as a waiver of her right of exemption from arrest; and, having regard to the nature of the right claimed, it was one which the Court could not properly decline to consider on review, however late the application might have been. Secondly, it was said that the decree was absolute in its terms, and contained no express limitation of her liability; and as she did not apply for a review, no other course was open to the Small Cause Court Judge in-executing it but to enforce it in the ordinary manner. The decree had been made in a suit on a bond in which she had joined with her husband as surety, and simply directed her to pay the debt. As the law is clear that

in such a case Radhi would only be liable to the extent of her stridhan-Govindji Khimii v. Lakmidas Nathubhoy I.L.R. 4 Bom. 318 and Narotam v. Nanka I.L.R., 6 Bom. 473 it must be assumed that the direction to pay had reference to that fund only. We think, therefore, that the Small Cause Court Judge was wrong in refusing the application.

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