

In Re: Harshankar Parshad

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SooperKanoon Citation : sooperkanoon.com/448465

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All178

Judge : Robert Stuart, C.J., ;Pearson, ;Turner, ;Spankie and ;Oldfield, JJ.

Appellant : In Re: Harshankar Parshad

Judgement :

1. Proceedings in execution of decree would not, in our opinion, ordinarily fall within the term 'miscellaneous proceedings.' They should be regarded rather as stages in the suit or proceeding in which the decree or order under execution was passed; whereas by miscellaneous proceedings we should understand ordinarily those applications commenced by petition, and not by plaint, of a less formal character than suits, and generally if not universally calling on the Court to exercise special powers conferred on it by the Legislature, such as applications for certificates to collect debts, applications for probate or letters of administration, applications for appointment of guardians, etc.; and possibly also the term miscellaneous proceedings may also be applied with propriety to those proceedings which the Court is empowered to institute of its own motion, such as proceedings for the institution of prosecutions in certain cases.

2. But unless we hold that the term miscellaneous proceedings in Section 38 has a wider significance, and applies to all proceedings for which no special provision is made, the Court appears to be left without powers which are necessary to enable

it to deal with such proceedings. It would have no power to deal with them in default of appearance; it would have no power to enforce the attendance of witnesses; and there are no directions as to the form of the order nor as to the form of appeal from an order passed in such proceedings in cases in which an appeal lies.* We would, therefore, read the term in this section as embracing all proceedings, not being regular suits or appeals, for which no procedure is expressly provided, and in that sense it embraces proceedings in execution of decree.+ In support of this contention, it maybe mentioned that, in mofussil Courts, proceedings in execution have been treated as falling within the class of 'mutafarrikat,' or miscellaneous proceedings or cases, as opposed to 'nambari,' or regular suits, and appeals from orders passed in proceedings in execution have up to the present time been filed as miscellaneous appeals. We are, therefore, of opinion that the Court had power to stay execution under the circumstances stated in the reference.

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

* The section gives no right of appeal in such proceedings--see Hureenath Konndoo v. Modhoo Soondan Saha 19 W.R. 122.

+ The following, in addition to proceedings in execution of decree, have been held to be 'miscellaneous proceedings' within the meaning of Section 38, Act XXIII of 1861:

Proceedings under Section 246, Act VIII of 1859--Bapu v. Lakshuman Baji 10 Bom. H.C.R. 19.

Enquiries by Civil Courts under Section 171, Act XXV of 1861, corresponding to Section 471, Act X of 1872--The case of the Collector of Tirhoot 14 W.R. 390.

Applications to the Bombay High Court for the exercise of its Extraordinary Jurisdiction under Bombay Regulation II of 1827, Section 5, Clause 2-

The petition of Nagappa 5 Bom. H.C.R. A.C. 215.