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ibrahimji Vs. HasanuddIn Khan

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Court : Allahabad

Decided On : Feb-17-1915

Reported in : AIR1915All231; 28Ind.Cas.381

Judge : Tudball and; Rafique, JJ.

Appellant : ibrahimji

Respondent : HasanuddIn Khan

Judgement :

1. The decree in the present case was obtained on November 30th, 1908. The first application for execution was made on February, 17th 1909. It was dismissed for default of prosecution. On March 11th, 1910, a second application was made by the decree-holder for execution by arrest of the judgment-debtor. Thereupon the judgment-debtor applied to the District Judge to be declared an insolvent. In the course of the insolvency proceedings on May 14th, 1910, the Pleader for the decree-holder, who was one of the creditors, stated that if the judgment-debtor would withdraw his application in insolvency he would guarantee not to apply for his arrest in execution of his decree for a period of two years. To this the judgment-debtor consented and the District Judge struck off the application for insolvency. This was 14th May 14th, 1910. The execution application of March 11th, 1910, was still pending and on May 18th, 1910, the decree-holder's Pleader again attended Court and the Munsif directed that a warrant of arrest should issue. It is clear that a warrant of arrest was issued, but that it was returned unexecuted

by the Nazir because the decree-holder failed to pay the necessary diet money. It will be noted also that the decree-holder's Pleader on this date called the attention of the Court to the fact that the necessary fees for the arrest of the judgment-debtor were in deposit in Court. The present application for execution was made on May 3rd, 1913. It has been held by the Courts below to be out of time and the decree-holder comes here in second appeal. The first plea raised is that the application of March 11th, 1910, is still pending and that this is merely a continuation of those proceedings. This in view off the order of the Munsif, dated June 2nd, 1910, striking off the application by reason of the decree-holder's default of payment of the necessary diet money and of the contents of the present application itself, can have no force whatsoever. The present application is an application for execution. It is not an application tendering diet money and asking the Court to go on with the former proceeding.

2. The next plea raised is that the present application is within three years of May 10th, 1910, the date on which the Munsif directed the issue of a warrant of arrest. It is urged somewhat lamely that the decree-holder's Pleader must on that day have orally asked the Court to issue a warrant of arrest and, therefore, an oral application must have been made to take a step-in-aid of execution. There is no evidence on the record at all to prove that any such oral application was made and we cannot presume it.

3. It is next sought to persuade us to hold that the meaning of Article 182, Clause 5, of the Schedule to the Limitation Act is that the time from which the period begins to run is not the date of the application to the Court to take a step-in-aid of execution, but the date on which the Court actually takes the step. We fail to see that this clause means anything else but what the plain language thereof shows it to mean. The wording' is, where the application next hereinafter mentioned has been made, the date of applying etc., etc.' Lastly it is said that by reason of the agreement of May 14th, 1910, the decree-holder is entitled to credit for the two years following that date. In the first place the decree-holder did not abide by that agreement, for on the 18th of May the Court issued a warrant of arrest. Moreover Section 15 of the Limitation Act does not apply, for there was no order for suspension nor was there any injunction; there was no reason why the decree

should not have been executed in any other manner than by the arrest of the judgment-debtor; find lastly that agreement did not prevent the decree-holder from applying within the period of limitation for execution. In our opinion the orders of the Courts below are perfectly correct. There is no force in this appeal. It is, therefore, dismissed with costs, including fees on the higher scale.

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