

In Re: Bolye Chund Dutt

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Court : Kolkata

Decided On : Jul-26-1893

Reported in : (1893)ILR20Cal874

Judge : Sale, J.

Appellant : In Re: Bolye Chund Dutt

Judgement :

Sale, J.

1. This is an application which is made to commit a judgment-debtor to prison under an order of attachment made by this Court on the 25th of April 1893. The circumstances, as appears from the tabular statement under which that order of attachment was made, areas follow: Plaintiff was arrested under an order dated 19th December 1892, after notice to him, and on the 10th of January 1893 he was committed to prison. Subsequently he applied for the benefit of the Insolvent Act, and on the 24th January he was released from custody and obtained an ad interim protection order. On the 8th April 1893 the hearing in the insolvency came on, and the discharge of the plaintiff was adjourned for twelve months without protection. The defendant has incurred costs of execution, a sum of Rs. 48 besides the costs of the commitment, and the Sheriff's fees. The attachment of this debtor under this order is now brought before me on the application of the judgment-creditor to re-commit him to prison under the same decree under which he was committed to

prison on a former occasion. The objection is taken by Mr. Sinha, on behalf of the judgment-debtor, that the Court, under the Civil Procedure Code, has no power to make an order for the arrest of the judgment-debtor a second time under the same decree, and he has referred to the decision of the learned Chief Justice in the case of *The Secretary of State for India in Council v. Judah* I.L.R. 12 Cal. 652. In that case the head-note runs as follows: 'A judgment-creditor once arrested and imprisoned in execution of a decree cannot, under the Civil Procedure Code, be again arrested under a fresh writ of attachment on the same decree.' Mr. Apar, who appears on behalf of the judgment-creditor in this case, points out that the circumstances under which the judgment-debtor in the case of *The Secretary of State for India in Council v. Judah* obtained his release are entirely different from the circumstances under which the judgment-debtor obtained his release in the present case. It is said that the judgment-debtor in the case by the Secretary of State obtained his release by means of a default on the part of the plaintiff in not providing for his re-arrest after the application which he had made to be declared an insolvent under the section in the Civil Procedure Code had been refused. It seems that after the enquiry provided for by the section of the Civil Procedure Code, which at that time applied to the High Court, but which does not now apply, the application of the judgment-debtor was refused, and thereupon the Advocate-General, on behalf of the plaintiff, applied for the re-commitment of the judgment-debtor. The Court declined to make the order, and the result was that in the absence of the bailiff the judgment-debtor walked out of the Court. Subsequently an application was made for a fresh order of attachment on the judgment-debtor, and it was contended on his behalf that there could be no re-arrest under the same decree.

2. The learned Chief Justice deals with that argument in this way. He says: 'Now, what the rights of the plaintiff are with reference to the existing warrant it is not for me to say. Having regard to the provisions of Section 341* and subsequent sections, I am clearly of opinion that the Code only contemplates one arrest, and if the defendant is to be remitted to jail, or if he is in custody now, he is in custody under the original arrest, and he can be in custody under no other.' Then the learned Chief Justice further down goes on to say that 'Section 341 provides that a man should be discharged from prison in various ways; that is to say, upon the

money being paid, upon the decree being satisfied in full, the creditor consenting to his release, non-payment of the allowance by the judgment-creditor, the insolvency of the judgment-debtor, and the term of his imprisonment having expired. Now all these things obviously deal with one imprisonment only, and one arrest under Section 254, which is the arrest to enforce payment of the money.' Then the learned Chief Justice says: 'I am of opinion that the defendant having been once arrested, there can be no other writ which can issue from this Court. Whether the party has the right to re-arrest him under the original writ, or what are those rights or what his liabilities may be, is a totally different matter. As I have said before, I think that this Court, having once granted an order for the defendant's arrest, and he having been arrested under that order, it is not open to it to grant another order, and therefore this application must be refused.' While I fully assent to the argument which has been put forward by Mr. Apcar that a very great difference may exist as regards the circumstances under which a judgment-debtor obtains his release, whether the circumstances show that it was by reason of a default on the part of the judgment-creditor or by reason of his own conduct, yet I can only read the observations of the learned Chief Justice in one way, and that is that the Civil Procedure contemplates as immaterial the circumstances under which the judgment-debtor obtains his release, and that, as a fact, under the Civil Procedure Code, there is no power whatsoever in the Court to order a second arrest under one and the same decree. That, in my opinion, is a fair and plain construction of the judgment of the learned Chief Justice, and where a question has concern with the liberty of the subject, I think I am bound to read it in a way tending rather to a liberal construction than to a restricted one, I think, therefore, that I am governed in this matter by this decision in the case of *The Secretary of State for India in Council v. Judah*, and I must hold that the Court, having regard to the section of the Civil Procedure Code, has no power to order the arrest of a judgment-debtor a second time on the same decree. Mr. Apear has very properly pointed out that the circumstance under which the judgment-debtor in this case obtained his release was by reason of the provisions of the Insolvency Act (Section 13) which gives the Court power to grant ad interim protection under certain circumstances, and that in this case the judgment-debtor, having obtained his release by virtue of that section of the insolvency Act, the circumstances do

not fall within the grounds of the decision of the case which has been cited. As I think the learned Chief Justice's view was that the circumstances were absolutely immaterial as whether the discharge was obtained by default of the judgment-creditor or in any other way whatsoever, I am unable to give effect to Mr. Apar's argument. The result is that the judgment-debtor must be discharged, but I do not think, under the circumstances, I shall make any order as to costs.

* Release of judgment-debtor.

[Section 341 : The Judgment-debtor shall be discharged from Jail,

(a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail; or

(b) on the decree being otherwise fully satisfied; or

(c) at the request of the person on whose application he has been imprisoned; or

(d) on such person omitting to pay the allowance as hereinbefore directed; or

(e) if the judgment-debtor be declared an insolvent, as hereinafter provided; or (f) when the term of his imprisonment, as limited by Section 342, is fulfilled:

Provided that, in the second, third and fifth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this section is not thereby discharged from his debt, but he can not be re-arrested under the decree in execution of which he was imprisoned.]

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