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Court : Kolkata

Decided On : Dec-20-1926

Reported in : AIR1927Cal935

Appellant : Sm. Matangini Devi and anr.

Respondent : Behari Lal Banerjee

Judgement :

Duval, J.

1. In this case there was an application made for execution of a certain decree passed in a will case which had been finally decided by this Court on the 5th January 1921. In March 1923 an application was made to transfer the case to the Subordinate Judge of Asansol for execution. It was so transferred but was subsequently dismissed for default. Then a fresh application was made before the District Judge for execution of the decree on the 5th May 1924. A notice was issued apparently under Order 21, Rule 22 and a petition of objection was filed. The case was adjourned for various reasons mainly because the District Judge engaged himself in the Sessions from August 1924 to August 1925 and came up on the 22nd of that month when the decree-holder was absent. The judgment-debtor was present by his pleader and the Judge passed the following order:

The petitioner's pleader is present. The execution case is hereby dismissed' for default and petitioner's objection is allowed.

2. Now it is perfectly clear that the order dismissing the execution case for default is a good order and that order must stand simply on the ground on which it was given that is, the absence of the decree-holder. But that is no ground for adding 'petitioner's objection is allowed.' It does not appear on the record that the merits of this application of objection were argued before the Judge ex parte nor does it appear that the Judge really came to any adjudication on the merits of that application. We think, therefore, that the proper order is that while confirming the order dismissing the execution case for default we set aside the further order petitioners' objection is allowed.' In case any other application is made it will be open to the judgment-debtor again to raise his objection.

3. In the circumstances, we pass no order as to costs.

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