

Sunder Lal Vs. Banarsi Das and ors.

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Court : Allahabad

Decided On : Jan-28-1918

Reported in : 45Ind.Cas.531

Judge : Tudball, J.

Appellant : Sunder Lal

Respondent : Banarsi Das and ors.

Judgement :

Tudball, J.

1. All the facts except one or two are clearly set out in the judgment of the Court below. On the 16th of May 1910 the appellant obtained a decree for costs against Banarsi Das in the Court of the Subordinate Judge of Agra. Banarsi Das who was the plaintiff in that suit appealed to the High Court and his appeal was dismissed on the 28th of October 1912, costs being awarded to the respondents therein of whom the present appellant was one. Separate costs were allowed to him. On the 9th of August 1910 he applied for execution of the first Court's decree by the arrest of his judgment-debtor. The application fell through. On the 15th of December 1911 he applied for execution by attachment of a decree which Banarsi Das had obtained against certain other persons. The decree was duly attached and on the 13th of March 1912 the application for execution was filed. The appellant then proceeded to execute the decree which he had attached as against Banarsi Das' judgment-debtors. The property was sold, the decree was satisfied and the present appellant also remained satisfied. But unfortunately for him the decree which he had executed against Banarsi Das' judgment-debtors was pending in appeal and it was finally set aside and the appellant, had to refund the money, which he did on the 27th of September 1915. In the meantime, as will be evident from the date of the decision of the High Court on appeal, Banarsi Das' appeal had been dismissed and appellant had been awarded the costs of that appeal also. On the 11th of January 1913 he had applied for execution of the decree of the High Court awarding him costs, and that application was struck off on the 14th of January 1913 after one other decree in some other case had been attached thereunder. Having had to refund the money that he had recovered towards the satisfaction of the decree of the Subordinate Judge, the appellant on the 13th of February 1916 made the present application for execution to the Subordinate Judge of Muttra. He sought not the attachment of ftny property but the arrest of the judgment-debtor. The Courts below have held that the application is barred under Article 182 of the Limitation Act and the applicant has come here.

2. Prima facie the application is an application for execution of a certain decree and it is under Article 182 prima facie barred by time, even if we take into consideration the

application of the 11th of January 1913. On examination of the present application I see that it was actually filed in the Court of the Subordinate Judge of Agra on the 12th of January 1913, that is, one day out of time. The Court at Agra had no jurisdiction and the applicant had to go on to the Court at Muttra. It is alleged that Article 181, which is a general Article for applications to which no period of limitation is provided, should be applied to the facts of the present case. It is pointed out with some earnestness that the appellant was up to the 27th of September 1915 in possession of the money and did not need to apply for any further execution and that it is the refund of the money which has given him a fresh ground for application, for execution, and I am asked to apply Article 181 to the special circumstances of this case. Much as I should like to be able to help the appellant, I do not see how I can avoid the clear and distinct language of the Limitation Act. Article 182 lays down a period of three years for an application for the execution of a decree. In form and in substance the present application is an application for execution of the decree, and Article 181, in my opinion, cannot possibly be applied. Section 5 of the Limitation Act also does not apply, and I cannot admit the application out of time under that section. To some extent the appellant is also to blame, for if he had come into Court with an application for execution immediately after he had refunded the money, it would have been well within time as that would have been within three years from the application of the 11th of January 1913. He has been negligent and I am afraid must take the result of his own acts. The appeal, therefore, fails and is dismissed. As the opposite party does not appear, I pass no order as to costs in this appeal.

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