

to obstruct or delay the execution of any personal decree that may be passed hereafter. I think, under the circumstances, that having regard to the fact that there are no other properties and the extent of the incumbrances and the involved circumstances of the defendants, that I am justified in inferring this. I accordingly make the Rule absolute with costs.

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Rule absolute.

Attorney for the plaintiff : *N. C. Mandal.*

Attorneys for the defendant, Lokenath Pramanick :
G. N. Dutt & Co.

Attorney for the defendant, Biswanath Pramanick :
M. M. Chatterjee.

ORIGINAL CIVIL.

Before Chaudhuri J.

LAKHIMANI DASSI

v.

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 June 20.

Attorney and Client—Bill of costs—High Court Original Side Rules, Ch. XXXVIII, r. 67—Limitation—Summary procedure.

When an application by an attorney for realisation of costs, under the High Court Original Side Rules, Chapter XXXVIII, r. 67, involves an enquiry, it should not be dealt with in a summary manner.

Art. 84 of the Limitation Act (Act IX of 1908) applies to such applications.

Wadia, Gandhi & Co. v. Purshotam Sivji (1), *Chand Monee v. Santo Monee* (2), *Abba Haji Ishmail v. Abba Thara* (3) referred to.

* Application in Original Civil Suit No. 56 of 1912.

(1) (1907) I. L. R. 32 Rom. 1. (2) (1897) I. L. R. 24 Calc. 707.

(3) (1876) I. L. R. 1 Bom. 253.

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Latu Lal Mullick, one of the defendants in this suit, engaged Messrs. G. C. Chunder & Co. as his attorneys to act in this suit. On 8th July 1912, a decree was made and the parties other than the two defendants, Chandan Moni Dassi and Annapurna Dassi, were ordered to bear their own costs taxed on Scale No. II. On 4th September 1913, Messrs. G. C. Chunder & Co. had their bill taxed and they were allowed Rs. 261-2, as between party and party, and Rs. 559-14 as between attorney and client, thus making a total of Rs. 821 out of which Latu Lal Mullick paid a sum of Rs. 174, leaving a balance of Rs. 647. On 9th February 1913; Latu Lal Mullick died leaving his sons and heirs Dwijendra Lal Mullick, Dharendra Lal Mullick and Birendra Lal Mullick. The balance of the taxed bill remaining unpaid, Messrs. G. C. Chunder & Co. made this application under the High Court Original Side Rules, Chapter XXXVIII, r. 67 against Dwijendra, Dharendra and Birendra for realisation of the same.

The objections taken were that the application was barred under Article 181 of the Limitation Act and that at the time of Latu Lal Mullick's death the firm of Messrs. G. C. Chunder & Co. consisted of Babu Gonesh Chunder Chunder, Babu Raj Chunder Chunder and Babu Lakhi Naraiyan Khetri; they being all dead, the old firm was dissolved and the present firm could not make an application under Chapter XXXVIII, r. 67 of the Original Side Rules.

Mr. N. N. Sircar, for G. C. Chunder & Co.

Babu H. N. Dutta, for the representatives of Latu Lal Mullick.

CHAUDHURI J. This is an application, under rule 67, Chapter 38 of our Rules, by Messrs. G. C. Chunder & Co., a very well-known firm of attorneys of this Court.

One Latu Lal Mullick was a client of that firm which conducted a suit on his behalf, being suit No. 56 of 1912. Latu Lal died on the 9th February 1913. The bill of costs was taxed on the 4th September 1913. Mr. B. K. Bose was taken in as a partner of that firm on the 1st January 1914. Mr. G. C. Chunder, the senior member of that firm, died on 3rd July 1914; his son Babu Raj Chunder Chunder, who was also a partner, died on the 5th July 1915; and Babu Lakhi Narain Khetri, another partner of the firm, died on the 5th August 1917.

The summons for this application was taken out on the 10th May 1918 for hearing on the 15th May 1918. The present members of the firm are Mr. B. K. Bose and two others who were not originally members of that firm. When the application came before me the representatives of Latu Lal appeared and contested it on two grounds, viz., that the application was barred under Article 181 of the present Limitation Act, and that the present firm of G. C. Chunder & Co. was not entitled to make the application under section 67. On the first day of the hearing, time was taken by the applicants to meet the case of limitation, so far as I remember on the ground that there had been an acknowledgment of the debt by the representatives. Further affidavits have now been put in by the applicant firm in which the case now presented before me is that the representatives promised to pay and that it was in fact a novation. The representatives of Latu Lal contend that Article 181 of the Limitation Act is now in a form which makes it very general and that it ought not to be restricted to applications under the Civil Procedure Code. As against this contention Mr. Justice Davar's ruling in *Wadia, Gandhi & Co. v. Purshotam Sivji* (1) is

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relied upon. The provisions of Article 181 were first introduced by the Limitation Act of 1877, Article 178, where the words were "by the Code of Civil Procedure, section 230." The present Civil Procedure Code is an Act of 1908 and the Article now stands with the words "by section 48 of the Civil Procedure Code, 1908." There is practically no difference between the two Articles. It was held under the old Article that the general words must be construed with some limitation having regard to the words they follow, viz., the words above quoted, and that the applications there dealt with were therefore applications *ijusdem generis*. A large number of decisions of this Court and of other Courts support this view, but the case of *Chand Monee v. Santor Monee* (1) indicates a somewhat different view. It deals with an application under section 173 of the Bengal Tenancy Act, but holds that Article 178 of the Limitation Act of 1877 is applicable. Article 166 of Act IX of 1871 (which was the previous Limitation Act) referred to the execution of decisions of Revenue Courts. In the Act of 1877 there is no section corresponding to Article 166, yet it was held that section 178 was applicable in the case above referred to. With the exception of that case all the other cases practically take the same view, but I do not want to discuss the matter at any great length. The question before me is whether Article 181 applies to applications under our Rule 67, Chapter 38. In the Bombay case, *Wadia, Gandhi & Co. v. Purshotam Sivji* (2), it has been held that that Article does not cover applications of this kind. It follows an earlier Bombay case *Abba Haji Ishmail v. Abba Thara* (3). The decision of Davar J. is of 1907 and since we have taken our rule from the Bombay Rules,

(1) (1897) I. L. R. 24 Calc. 707. (2) (1907) I. L. R. 32 Bom. 1.

(3) (1876) I. L. R. 1 Bom. 253.

I think it is only right to follow the decisions governing this matter of the Bombay Court, especially as the same view has been taken there for over forty years. I therefore hold that Article 181 of the Limitation Act does not cover applications of this character, but it is a very different proposition whether unlimited time can be given to a party making such an application. If there is no special rule of limitation, discretion has to be exercised in allowing such applications, which are of a summary nature. The rule itself provides an alternative relief, viz., relief by suit, and such a suit can only be instituted within the time allowed in Article 84 of the Limitation Act, and it therefore seems to me that in exercising discretion with regard to such applications when a question of lapse of time is raised, it should be considered whether the time allowed by Article 84 ought not be the time limit.

The next point is as regards the position of the present firm of G. C. Chunder & Co. It seems to me that such an application for payment can only be acceded to, in a summary procedure, where there is no contest or doubt that the parties applying are capable of giving a full discharge for the amount claimed. Lakhi Narain Khetri is dead and has left executors who represent his estate. It is stated in the affidavits relied upon by the applicants that the representatives of Lakhi Narain are agreeable to join them in giving a discharge to the representatives of Latu Lall, but it is a matter which clearly involves an enquiry. An order made under this rule has the effect of a decree and if there is any contest between the parties which involves an enquiry it ought hardly to be dealt with in a summary manner. In addition to that the case now made is one of novation. In the case decided by Davar J. relied upon by the

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applicants, I find the following passage with which I quite agree :—

“The rule itself makes a distinct provision for referring the parties to a suit and this course the Judge in Chambers, would, I apprehend, adopt if the client set up some special contract or arrangement with the solicitor which the solicitor denied or where for instance the client pleaded payment or satisfaction which was not admitted or where, generally speaking, the client discloses a defence in showing cause which would necessitate the taking of oral evidence.”

I do not think I ought to go into the question of novation in a summary application of this character and I therefore refer the applicants to a suit and refuse the present application. Having regard to the fact that there is a sum of money still due to the firm, I will make no order for costs against them.

N. G.

Application refused.