

will interfere; but where this does not appear to be the case, and there is simply an omission on the part of the Appellate Court to record its reasons for allowing additional evidence to be taken the second Appellate Court will not interfere.

Now, in this case, we cannot say upon the judgment that the District Judge was of opinion that there was no substantial cause for taking additional evidence within the meaning of clause (b) of s. 568. No doubt, he says that he "allows additional evidence to be given on the point, so that the order of remand may be carried out in the way most favourable to the appellant before the High Court." This observation no doubt is entirely based upon a misapprehension of the purport of the remand judgment. The remand judgment simply directed him to decide a particular issue which it was essentially necessary to decide in order to dispose of the case before him satisfactorily. It did not at all authorize, or direct, or in any way countenance, the taking of additional evidence. Upon that point he was left entirely to act according to the law. But although in this respect he has fallen into error, still we cannot say that before taking additional evidence he was not satisfied there was a substantial case of the nature mentioned in clause (b) of section 568. We dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Norris.

JHOTI SAHU (DECREE-HOLDER) v. BHUBUN GIR (JUDGMENT-DEBTOR.)*
*Execution—Decree under s. 210 of Act XIV of 1882—Limitation—Civil
 Procedure Code, Act XIV of 1882, s. 210.*

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 December 4.

On the 28rd February 1878, an application was made for execution of a decree dated the 3rd December 1877, in which the decree-holder stated that the judgment-debtor had agreed to pay the balance then due on the 13th August 1878. The application was then struck off on the 26th June 1878. On the 30th June 1881 the decree-holder again applied for execution, and on the 11th July 1881 the judgment-debtor, with the consent of the decree-holder, applied for time to pay the balance due till the 8th September 1881,

* Appeal from Appellate Order No. 213 of 1884, against the order of A. C. Brett, Esq., Judge of Tirhoot, dated 30th of April 1884, reversing the order of Babu Abinash Chunder Mitter, Second Subordinate Judge of that District, dated 8th August 1883.

1884 and that application was also struck off. On the 1st March 1883 the decree-holder again applied for execution.

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Held, that the application was not barred by limitation upon the ground that the application by the judgment-debtor, made on the 11th July 1881, alleging that he had come to an arrangement with the decree-holder for the payment of the amount due by instalments, having resulted in its being registered and the proceedings struck off, amounted to a direction that the decretal amount be paid by instalments as stipulated in the petitions, and that this being so, there was a decree passed on that date under the provisions of the second paragraph of s. 210 of the Code of Civil Procedure, of which the decree-holder was entitled to have execution.

THIS was an appeal by a decree-holder against an order rejecting an application for execution.

The decree was dated the 3rd December 1877, and the decree-holder first applied for execution on the 23rd February 1878, stating that some portion of the debt had been paid, and that the judgment-debtor had agreed to pay the balance on the 13th August 1878. That application was struck off the file on the 26th June 1878.

On the 30th June 1881 the decree-holder again applied for execution, but on the 11th July 1881 the judgment-debtor, with the consent of the decree-holder, put in an application admitting the agreement set out by the decree-holder in his petition of the 23rd February 1878, and asking for time till the 8th September 1881 in which to pay off the balance due under the decree. The case was then struck off. The present application for execution was made on the 1st March 1883.

The first Court held that the application was in time, on the ground that the judgment-debtor was estopped from pleading limitation by reason of his having filed the petition on the 11th July 1881 admitting the debt.

On appeal the District Judge reversed that order, upon the ground that the right to execution was barred in February 1881, and that it could not therefore be revived by any subsequent act or acknowledgment by the judgment-debtor.

The decree-holder appealed to the High Court.

Babu *Basunt Coomár Bose* for the appellant.

No one appeared for the respondent.

The judgment of the Court (MITTER and NORRIS, JJ.) was delivered by

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MITTER, J.—We think that in this case the decision of the lower Appellate Court should be set aside, although we agree with the Judge in the reasons given by him in disposing of the arguments advanced before him in support of the contention that the decree was not barred by limitation.

We set aside the decision upon the ground that there was a decree passed, on the 11th July 1881, under the provisions of the second paragraph of s. 210 of the Code of Civil Procedure.

This point apparently was not taken before the District Judge, and from the facts of the case as they appear on the proceedings, the point seems to arise.

On the 30th June 1881 the decree-holder, appellant before us, made a second application for execution. Thereupon, on the 11th July 1881, the judgment-debtor appeared and made an application, alleging that he had come to an arrangement with the decree-holder for the payment of the money, due under the decree, by instalments, and that the decree-holder had given him two months' time to pay off the money. The application was registered, and then the proceedings were struck off. We think this amounts to a direction that the decretal amount be paid by instalments as stipulated in the petition, to which the other side had consented. That being so, the present application, which was filed on the 1st March 1883, was clearly within time.

We therefore set aside the decision of the lower Appellate Court, and restore that of the Court of first instance, but make no order as to costs.

Appeal allowed.