

1882  
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 NOBIN  
 CHUNDER  
 ROY  
 v.  
 RUP LALL  
 DAS.

assignee by law of the same defendant No. 1. We think, therefore, there are no grounds for this appeal, which will be dismissed with costs. We may observe that no question has been raised by either party as to there not being a personal decree against defendant No. 1, and the amount being leviable upon the share only in case it cannot be levied from him personally. This judgment will admittedly govern appeals Nos. 466 and 467 of 1881.

MCDONELL, J.—I am unable to distinguish this case from that of *Enayet Hossain v. Muddun Monee Shahoon* (1), and following that ruling I concur in dismissing these appeals.

*Appeal dismissed.*

*Before Mr. Justice Wilson and Mr. Justice O'Keenaly.*

1882.  
 July 10.

BHOLANATH ROY (JUDGMENT-DEBTOR) v. NURENDRO NATH ROY  
 (DECREE-HOLDER).\*

*Landlord and Tenant—Rent Decree—Execution of Decree—Limitation—  
 Beng. Act VIII of 1869, s. 58.*

Where an application for the transfer of a rent decree for execution has been made and granted by the Court which passed the decree within three years from the date of the decree, but no application for execution is made to the Court to which the decree has been transferred within three years from the date of the decree, the execution of the decree will be barred by limitation, under the provisions of Beng. Act VIII of 1869, s. 58.

THIS was an application for execution of a decree for rent. The facts are thus stated by the Court of first instance: "The decree in question is a rent decree, and for a sum less than Rs. 500, and the application under s. 230 of Act X of 1877 has been made to this Court, after expiration of three years from the date of the decree; but the application under s. 223 of the said Act for the transfer of the decree was made to the Munsiff's Court, Putnitollah, in which these decrees were passed within three years from the date of the decree. The judgment-debtor objects to the execution on the

\* Appeal from Appellate Order No. 94 of 1882, against the order of C. A. Kelly, Esq., Judge of Pubna, dated the 20th January 1882, reversing the order of Baboo Lokenath Nundi, Munsiff of Nawabgunge, dated the 18th September 1881.

(1) 14 B. L. R., 155; S. C., 22 W. R., 411.

plea that limitation bars. The point to be decided is whether the execution of the decree is barred by limitation." The Munsiff, while holding in conformity with *Heera Lall Seal v. Poran Matteah* (1), and *Rhidoy Krishna Ghose v. Kailas Chandra Bose* (2), that s. 58 was not to be construed literally, yet held that an application under s. 223 of Act X of 1877 could not be considered an application to execute the decree; and as the application under s. 230 for execution of the decree had not been made within three years from the date of the decree, he held the execution of the decree was barred by limitation. On appeal the Judge said :

"In this case I think the Munsiff's judgment may be set aside. There is nothing in s. 230, Act X of 1877, that prohibits the presentation of an application for execution to the Court which passed the decree, although another application is put in afterwards before the Court to which the decree has been sent for execution. In this case it appears that an application was put in for transfer before the Munsiff of Patnitollah within time; that the decree was sent for execution to the Munsiff of Nawabgunge in this district, reaching the Munsiff, it appears, on or about the 5th of May 1881; and that application for execution, with talubanaah for notice, was put in on the 10th of May 1881, the Munsiff having directed by order of the 5th of May that a notice should be put up at the cutcherry for the decree-holder to appear, and directing that the case be put up on the 1st of June. It appears that notice subsequently issued, and that objection was made by the judgment-debtor. It is stated by the pleaders for the decree-holder that the application, which they contend was an application for execution, was in tabular form, though I do not consider it proper that any document showing this should be admitted on the record at this time. It appears, however, that the prayer in this application may be considered as an application for execution so far as allowing execution to proceed goes. On this view I reverse the order of the Munsiff and decree the appeal with costs."

The judgment-debtor appealed to the High Court on the grounds that the Court of appeal was wrong—(1) in holding execution was not barred by s. 58, Beng. Act VIII of 1869; and (2) in holding that an application under s. 223 for transfer of a decree to another Court is an application for execution within the meaning of s. 230 of the Code of Civil Procedure; and that the said application under s. 223 saved the application for execution from being barred.

(1) 6 W. R. (Act X), 84. (2) 4 B. L. R., F. B., 82 : S. C., 13 W. R. (F. B.), 3.

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BEOLANATH  
ROY  
v.  
NUEBENDRO  
NATH ROY.

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Baboo *Bama Churn Banerjee* for the appellant.BHOLANATH  
ROYBaboo *Joy Gobind Shome* for the respondent.N. NURENDRO  
NATH ROY.

The judgment of the Court (WILSON and O'KINEALY, JJ.) was delivered by

WILSON, J.—In this case the question turns wholly upon the construction of s. 58 of the Rent Act, which says that “no process of execution of any description whatsoever shall be issued on a judgment in any suit for any of the causes of action mentioned in ss. 27, 28, 29 or 30 of this Act, after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees.” In the present case the judgment or decree is for a sum less than Rs. 500, and the question raised is whether the right to execute is barred.

Now what appears to have happened is this: that within three years from the date of the decree an application was made for the transfer of a certified copy of the decree from the Court by which the decree was made, to the Court of the Munsiff of Nawabgunge. A certified copy was transmitted. After the lapse of three years from the date of the decree, an application was made for execution to the Munsiff of Nawabgunge. He held that the application was made too late. The District Judge reversed that decision. We think that the Munsiff was right, and the District Judge wrong. There are several decisions modifying the severity of the result of the absolutely literal construction of the terms of s. 58, as that section says that “no process of execution of any description whatsoever shall be issued.” Acting upon the ordinary rule of construction that the delay on the part of the Court is not to prejudice any man's rights, that section has been construed to mean that no process of execution shall issue unless it is properly applied for within three years. We have no right to relax the meaning of that section any further. We are asked to put such a construction upon it as to make it mean that no process shall issue unless some step, with a view to making an application, has been taken within three years. We do not think we are at liberty to put any such construction. The appeal will be allowed with costs.

*Appeal allowed.*