

APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Bennet*

1935
January, 16

NAWAB SINGH (JUDGMENT-DEBTOR) *v.* MITHU LAL AND
OTHERS (DECREE-HOLDERS)*

Civil Procedure Code, order XXI, rule 32(3)—Applicability to prohibitory injunctions—Enforcement of decree for prohibitory injunction by attachment and sale of property and payment of compensation out of sale proceeds.

Order XXI, rule 32(3) of the Civil Procedure Code applies to both classes of injunctions, namely mandatory as well as prohibitory. Where a decree for a permanent prohibitory injunction is once disobeyed, property of the judgment-debtor can be attached under rule 32(1), and upon the expiry of three months after the attachment the property can be sold under rule 32(3) inasmuch as the judgment-debtor has already irrevocably disobeyed the decree, and compensation can be awarded to the decree-holder out of the sale proceeds. It is not necessary that there must be a second disobedience, after the attachment, before the property can be sold.

Mr. Shiva Prasad Sinha, for the appellant.

Dr. N. P. Asthana and Mr. B. N. Sahai, for the respondents.

SULAIMAN, C.J., and BENNET, J.:—This is a judgment-debtor's appeal arising out of an execution proceeding. A decree was passed against him prohibiting him permanently by injunction from holding a fair on certain lands. The fair yields a considerable income. The defendant accordingly deliberately chose to disobey the injunction issued by the court and held a fair and made a profit out of it. The decree-holders accordingly executed the decree against him. The courts below have allowed Rs.300 compensation to the decree-holders and some cash has been attached.

In appeal it is contended that the decree for injunction was not executable. We are unable to accept this contention. There is a specific provision in order XXI,

*Second Appeal No. 769 of 1933, from a decree of Hari Shankar, Subordinate Judge of Etawah, dated the 27th of April, 1933, modifying a decree of Shri Gopal Singh, Munsif of Phaphund, dated the 24th of October, 1932.

rule 32 of the Civil Procedure Code which provides for the execution of a decree for injunction. It is futile to argue, therefore, that the only remedy of a decree-holder is to bring a separate suit for damages. Under sub-rule (1) a decree for injunction can be executed by the detention of the judgment-debtor in civil prison or by the attachment of his property or by both. This provision obviously applies to both kinds of decrees whether they be for an injunction ordering the defendant to do something or for restraining him or prohibiting him from doing something. Sub-rule (3) then provides that where any attachment has remained in force for one year, *if the judgment-debtor has not obeyed the decree* and the decree-holder has applied to have the attached property sold, such property may be sold, and the decree-holder may be given compensation out of the sale proceeds.

The learned advocate for the judgment-debtor contends before us that the first offence of disobedience of an injunction does not involve any serious penalty and although the attachment may continue, his property cannot be sold so long as he does not disobey the order a second time. He cannot dispute that if there is no other remedy the decree-holder could at least have the judgment-debtor detained in civil prison on account of his first disobedience.

It seems to us that where the injunction is for the doing of an act, and the judgment-debtor has failed to do the act, the attachment can continue for three months and if in the meantime the judgment-debtor carries out the directions contained in the decree and in that way obeys the decree his property cannot be sold. But where the injunction is for restraining him from doing an act and the judgment-debtor has already done the act in disobedience of the injunction, he has made it impossible for himself to obey the decree. No doubt the property cannot be sold until three months have expired after the attachment, but after the expiry

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of this period it will still be impossible for the judgment-debtor to show that he has obeyed the decree, inasmuch as he has really irrevocably disobeyed it. If this were not the interpretation then the result would be that where there is an injunction restraining a defendant from demolishing a house, and he deliberately disobeys the injunction and demolishes the house, no compensation can be awarded to the decree-holder in execution because the judgment-debtor will be able to say that he has not demolished the house a second time after the attachment. In our opinion where the judgment-debtor has, by his own act, made it impossible for himself to obey the decree he cannot escape from the liability to pay compensation which will be enforced after the attachment has subsisted for three months. If, however, it be impossible to award the decree-holder any compensation, then the only remedy which must be adopted would be to detain him in civil prison.

The next point urged is that the amount of compensation awarded to the decree-holders is too high and that there should have been a proportionate reduction on account of the death of one of the defendants who disobeyed the decree. The injunction was against all the defendants jointly and they were all jointly and severally responsible for its disobedience as well as for the profit which they have made out of the plaintiffs' lands by holding the fair on such lands. The mere fact that one of them was dead will not justify a reduction of the amount which the plaintiffs are entitled to get. We are therefore unable to accept this contention. The result is that the appeal fails and is dismissed with costs.

After this order was dictated our attention was drawn to the case of *Hem Chandra Nasker v. Narendra Nath Bose* (1), where it was held that order XXI, rule 32, clauses (1), (2) and (3) apply to both classes of injunctions, namely mandatory as well as prohibitory.

(1) (1933) 38 C.W.N., 101.