

REVISIONAL CIVIL.

*Before Sir Shadi Lal, Chief Justice, and Mr. Justice
Wilberforce.*

BHOLU (JUDGMENT-DEBTOR)—*Petitioner,*

versus

RAM LAL (DECREE-HOLDER)—*Respondent.*

Civil Revision No. 1134 of 1917.

*Civil Procedure Code, Act V of 1908, sections 141 and 151—
Procedure relating to suits—Whether applicable to applications for
execution—Application for execution dismissed for default, whether it
can be restored—Inherent power of Court.*

Held that section 141 of the Code of Civil Procedure, 1908
does not apply to a proceeding for execution.

Thakur Prasad v. Fakir-Ullah (1), *Hari Charan Ghose v.
Manmatha Nath Sen* (2), and *A. Balasubramania v. Swarnamal*
(3), followed.

Held, however, that in the exercise of its inherent power,
expressly recognized by section 151 of the Code, a Court can
restore an application for execution after it has dismissed it for
default, and should do so, notwithstanding that the applicant has
an alternative remedy by making a second application for execu-
tion, if he satisfies the Court that it should exercise its inherent
jurisdiction *ex debito justitia*.

Debu Bahsh Singh v. Habib Shah (4), referred to.

Balwi Ritu Kuer v. Alakhdeo Narain Singh (5), explained.

*Application for revision of the order of Lala Naran-
jan Das, Senior Subordinate Judge, Jhang, dated the 29th
August 1917, reversing that of Munshi Ghulam Rasul,
Munsif, 2nd Class, Chiniot, District Jhang, dated the
2nd July 1917, rejecting the application.*

MOHSIN SHAH, for Petitioner.

FAKIR CHAND, for Respondent.

The judgment of the Court was delivered by—

SHADI LAL, C. J.—The question, upon which we
are invited to express our opinion, is whether a Court
executing a decree can restore an application for execu-

(1) (1894) I. L. R. 17 All. 106 (P. C.).

(8) (1913) I. L. R. 38 Mad. 199.

(2) (1918) I. L. R. 41 Cal 1.

(4) (1913) I. L. R. 35 All. 381 (P. C.).

(5) (1918) 4 Patna L. J. 380.

tion after it has dismissed it for default. Now, there can be no doubt that section 141, Civil Procedure Code, 1908, does not apply to a proceeding for execution. That section reproduces with slight modifications section 647 of the previous Code, and it was held with reference to the latter section by their Lordships of the Privy Council in *Thakur Prasad v. Fakir Ullah* (1) that it did not apply to proceedings in execution, but applied only to original matters in the nature of suits, such as proceedings in probate, guardianship, etc. It is to be observed that at one time there was a considerable divergence of opinion as to whether section 647 applied to execution proceedings, and it was in consequence of this divergence that the Legislature added, by Act VI of 1892, an explanation to that section in order to make it clear that the provisions of the section were not applicable to proceedings in execution. The judgment of the Privy Council was, however, based upon the section as it stood before the explanation was added, the result being that the explanation was considered unnecessary and consequently omitted when the new Code was drafted. We are, therefore, of the opinion that the procedure relating to suits is not applicable to an application for execution, and this view coincides with the rule enunciated in *Hari Charan Ghose v. Manmatha Nath Sen* (2) and *A. Balasubramania Chetti, etc. v. Savarnammal, etc.* (3).

There is, however, nothing in the Code to restrict the inherent power of the Court to pass such orders as may be necessary for the ends of justice. Indeed, this power is now expressly recognized by section 151 of the Code, and the learned vakil for the petitioner admits that it was only in the exercise of this inherent power that the Court could dismiss for default an application for execution. Now, if the Court has an inherent power to pass an order of dismissal, there is absolutely no reason why it should not possess a similar power to set aside the dismissal if the ends of justice render it necessary to do so.

It is contended that a decree-holder, whose application for execution has been dismissed for want of prosecu-

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(1) (1894) I. L. R. 17 All. 106 (P. C.) (2) (1913) I. L. R. 41 Cal 1.

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tion, has got an alternative remedy and is entitled to make a second application for execution ; and that he should not, therefore, be allowed to invoke the inherent power of the Court to set aside an order of dismissal. There may, however, be cases, and indeed this is one of such cases, in which a second application may be barred by limitation ; and if we accept the contention, the decree-holder would in such cases have no remedy open to him. Be that as it may, we see no reason in principle for holding that the mere circumstance that an alternative remedy may be open to the decree-holder should prevent the Court from exercising its inherent jurisdiction if the circumstances of the case require its exercise. In this connection we are not unmindful of the observations to the contrary made by the Patna High Court *Babui Ritu Kuer v. Alakhdeo Narain Singh* (1), but we do not think that the learned Judges intended to enunciate any hard and fast rule of general application. We find that their Lordships of the Privy Council in *Nebi Bakhsh Singh v. Habib Shah* (2) laid down the rule that the Court has an inherent power to set aside an order dismissing a suit under Order IX, rule 8, Civil Procedure Code, for the non-appearance of the plaintiff, when the non-appearance was due to the plaintiff's death which fact was not brought to the notice of the Court dismissing the suit. There is, therefore, no adequate ground for holding that a similar power cannot be invoked in the case of an application for execution dismissed for default, when it is clear that the Code contains no express provisions on the subject.

Proceedings for execution of a decree certainly fall within the ambit of section 151, Civil Procedure Code, and if a party to an application for execution can satisfy the Court that it should exercise its inherent jurisdiction *ex debito justitiæ*, there is nothing in the law to debar the Court from exercising that inherent power.

We accordingly dismiss the application for revision with costs.

Revision dismissed.

(1) (1918) 4 Patna L. J. 390. (2) (1913) I. L. R. 35 All. 331 (P. C.).