CIVIL REVISION.

Before Mr. Justice Mosely.

1935

Feb. 6.

N.M.L. CHETTIAR FIRM

v.

THE OFFICIAL ASSIGNEE AND ANOTHER.*

Execution—Rateable distribution—Date of realization of assets—Pending and subsisting application—Civil Procedure Code (Act V of 1908), s. 73.

To entitle a creditor in execution to the benefit of rateable distribution under the provisions of s. 73 of the Civil Procedure Code his application must be made prior to the receipt of the assets by the Court, and must be subsisting and not already disposed of, whether on the merits or on default.

The applicant, in execution of his money decree of the Court of Small Causes, Rangoon against his judgment-debtor, applied for his arrest. The application was dismissed for default. Thereafter the second respondents, in execution of their decree of the Court of Small Causes, Rangoon, against the same judgment-debtor, attached a sum of money standing to the credit of the judgment-debtor in the High Court. The latter Court paid the money to the Small Causes Court of Rangoon, and it was credited to the judgment-debtor in the form of a deposit with the Accountant-General. The applicant, in execution of his decree, now sought to attach the money and claimed rateable distribution.

Held, that the first application having been dismissed, and there being no subsisting application on behalf of the applicant at the date of the receipt of the money by the executing Court, he was not entitled to rateable distribution.

Gopal Chandra v. *Hari Mohan Dutt*, 21 C.L.J. 624; *Ranganatha* v. *Seetharama*, 7 M.L.J. 110; *Tiruchittambala Chetti* v. *Seshayyangar*, I.L.R. 4 Mad. 383—*referred to.*

B. Chackrabarty v. *J. Roy*, 18 C.W.N. 1311—*dissented from.*

Chari for the applicant.

Sanyal for the second respondents.

MOSELY, J.—The applicant N.M.L. Chettiar Firm were the decree-holders in C.R. No. 9233 of 1929 of the Small Cause Court of Rangoon where the judgment-debtors were Ram Kirit Misser and one. They made an application for execution by arrest

* Civil Revision No. 448 of 1934 from the order of the Small Cause Court of Rangoon in Civil Execution Case No. 7201 of 1934.

on 9th June 1934 which was dismissed for default on 25th June 1934.

The second respondents, the P.M. Chettyar Firm, in C.R. No. 488 of 1928 of the High Court, got a decree against the same judgment-debtor R. K. Misser and one.

R. K. Misser was the decree-holder himself in C.R. No. 8321 of 1930 of the Small Cause Court of Rangoon. The judgment-debtors were P.V. Naidu and one. The P.M. Chettyar Firm on 30th July 1934 got the Small Cause Court to issue an attachment by prohibitory order under Order XXI, rule 52, to the Registrar of the High Court on the sum of Rs. 1,777-8-0 which was lying in High Court Execution Case No. 86 of 1934 to the credit of P.V. Naidu, the judgment-debtor in that case. A payment order dated 31st July 1934 was received by the Small Cause Court some time before 4th August 1934, and was transferred on that date to the credit of R. K. Misser in the form of a deposit with the Accountant-General.

Then the present applicants, the N.M.L. Firm, applied to the Small Cause Court in C.E. No. 7201 of 1934 in execution of their decree in C.R. No. 9233 of 1929 to "attach" the sum already attached by the respondent P.M. Chettyar Firm. All that was necessary for the N.M.L. Firm to do was to apply for rateable distribution. However, that is immaterial. The learned 2nd Judge of the Small Cause Court dismissed the application on the ground that the money sought to be attached had already been attached by the P.M. Chettyar Firm, and that the "attachment" of the N.L.M. Firm was too late.

Section 73 (*1*) of the Code of Civil Procedure reads as follows :

"Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to

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the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons :".

It was held in *Tiruchittambala Chetti* v. *Seshayyangar and others* (1) as long ago as 1881 by a Bench, including the Chief Justice, of the Madras High Court on the section as it formerly stood,—section 295 of the Code of Civil Procedure, which does not differ materially for the present purpose from section 73 (*1*) as it now stands,—that for an applicant for execution to be entitled to the benefit of this provision for rateable distribution, his application must not only have been made before the assets came into the hands of the Court, but must also be on the file and undisposed of. No reasons for the decision were given. It was merely said that the Court so understood the wording of the section. This decision was followed in 1910 by another Bench of the same Court in *T. Rangamatha Tawker and another* v. *T. Seetharama Chetty and another* (2).

In 1913 a Bench of the High Court of Calcutta in *Byomkesh Chackrabarty* v. *Jatindra Nath Roy and others* (3) came to the opposite conclusion, again without much discussion, and without citing any previous authority on the subject. It was said there that when an application for execution had been dismissed for non-prosecution the applicant was still a person entitled to share in rateable distribution of the assets within the meaning of Order XXI, rule 90, and it was the duty of the Court to grant him relief on the basis of his right

(1) (1881) I.L.R. 4 Mad. 383. (2) 7 M.L.T. 110.
(3) 18 C.W.N. 1311.

which has accrued previously, for there was no suggestion that he had waived or abandoned his claim against the judgment-debtors. Another Bench of the same Court, including Mookerjee J., however, came later to the same conclusion as the Madras High Court—*Gopal Chandra Bose and another* v. *Hari Mohan Dutt and others* (1). It was remarked that if on an application for execution, it had been held that the decree had been satisfied or was barred by limitation, or if such application had been dismissed and was not pending at the time when the assets were realized (or "received" as the section now stands), no valid claim for rateable distribution could be made under section 73.

I must respectfully agree with this enunciation of the law. To hold otherwise,—to hold that an application made at any time prior to the receipt of the assets, and not pending or subsisting at the time of the receipt, would entitle the applicant for execution to the benefit of rateable distribution,—would lead to the absurdity that a person, whose application for execution would otherwise be time-barred under Article 182 of the Limitation Act, could still apply for rateable distribution. To hold otherwise would be, moreover, contrary to the spirit and intention of section 73, the object of which is to prevent unnecessary multiplicity of execution proceedings and to obviate the necessity of many decree-holders each separately attaching and selling property, and to place all decree-holders on the same footing instead of allowing one to exclude all the others merely because he happened to be the first who had attached and sold the property. It was not intended that a decree-holder should be

(1) 21 C.J.L. 624.

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allowed to stand by doing nothing, and then reap the benefit of another decree-holder's superior diligence. It is obvious that the word "application" cannot be unqualified. It must mean an application made in accordance with law, not barred by limitation, not yet satisfied, and capable of being satisfied, and, in my opinion, it must also mean an application still subsisting and pending, and not already disposed of, whether on the merits or by default.

For these reasons I consider that the order of the trial Court was correct, and the applicant was not entitled to rateable distribution. This application in revision will be dismissed with costs, advocate's fee Rs. 34.

SPECIAL BENCH.

Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Mosely, and Mr. Justice Ba U.

1935

Mar. 11.

IN THE MATTER OF AN ADVOCATE.*

Advocate—Attempt to bribe judicial officer—Professional misconduct.

An advocate who attempts to bribe a judicial officer on behalf of his client is guilty of the grossest professional misconduct. He is unfit to remain a member of the legal profession, and should be struck off the Roll of Advocates.

A. Eggar (Government Advocate).

Zeya for the respondent.

PAGE, C.J.—In this case U Ba Htin, an advocate of the High Court, practising at Maubin, has been called on to show cause why he should not be struck off the Roll of Advocates or otherwise punished, on the ground that he has been guilty of professional

* Civil Misc. Application No. 6 of 1935